ASYLUM FRAUD: ABUSING AMERICA'S COMPASSION?

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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FEBRUARY 11, 2014

ASYLUM FRAUD: ABUSING AMERICA'S COMPASSION?

TUESDAY, FEBRUARY 11, 2014

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Subcommittee met, pursuant to call, at 10:08 a.m., in room 2141, Rayburn House Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee) presiding.

Present: Representatives Gowdy, Goodlatte, Poe, Smith of Texas, King, Jordan, Labrador, Holding, Lofgren, Conyers, Jackson Lee, and Garcia.

Also present: Representative Chaffetz.

Staff present: (Majority) George Fishman, Chief Counsel; Dimple Shah, Counsel; Andrea Loving, Counsel; Graham Owens, Clerk; and (Minority) David Shahoulian, Minority Counsel

Mr. GOWDY. Welcome. This is a hearing on asylum fraud. The Subcommittee on Immigration and Border Security will come to order.

[Disturbance in hearing room.]

Mr. GOWDY. Will the Capitol Police please remove the protestors?

The Subcommittee on Immigration and Border Security will come to order.

Without objection, the Chair is authorized to declare recesses of the Committee at any time.

We welcome our witnesses today.

Perhaps I am a little late in saying this, but I will say it nonetheless. We are delighted to have everyone here. If you disrupt the hearing, you will be removed. This is your one and only warning. Other Committee Chairmen may give you more than one warning. This is the one that I am going to give you. So if you want to participate, we are delighted to have you. If you want to protest, you can leave now or the police will escort you.

With that, I welcome all of our witnesses.

And I will recognize myself now for an opening statement and then the Ranking Member and then the Committee Chairman.

If you want an American version of running of the bulls, stand at the bottom of the steps after votes on a fly-out day. We are all in a hurry to get home, and I am probably the worst culprit of all. A few weeks ago, a young boy and his sister were at the bottom

of the steps waiting on me. Mr. Gowdy, Mr. Gowdy, do you have a minute? The young boy was 10 and his precious little sister was either 3 or 4. The first time I asked her, she held up three fingers and then she held up four. So we kind of agreed on 3 and a half.

I picked the little girl up and asked her brother what I could do to help him. I did not know if he wanted to talk about education. I did not know if he wanted to talk about medical research or immigration. What he said was he wanted was to pray for me and that was all he wanted. He wanted to say a prayer. So I held his sister and he said the most beautiful prayer at the foot of our Capitol.

I think about that little boy and his sister from time to time, and I thought about them specifically over the weekend when my friend, the Ranking Member, sent me an article on people who were being persecuted in one country. And then a few hours later, I saw another article on a man in Central Africa whose throat was cut simply because he was a Christian.

So we have the contrast between the greatness of this country where even a young boy and his sister can petition their Government at the foot of the Capitol, literally waiting on their Representative to practice the freedom of expression, the freedom of assembly, and the freedom of religious expression by openly praying in the shadow of the Capitol. And you contrast that with the reality that in other countries, you face persecution for your beliefs. You may be put to death for the possession of a book that we swear all of our witnesses in on in court. You may be denied access to education because of gender. You may be persecuted or killed if your religious beliefs do not match the religious beliefs of the majority. You will be victimized and the criminal justice system will be closed to you because you do not believe the right things or look the right way.

Our fellow citizens recognize the gift we were given by being born in a land that values and practices religious freedom, and because we realize how fortunate we are, compared to the plights of others, there is a tremendous generosity of spirit we feel toward those who were born into, or live in oppression, discrimination, persecution, and retaliation.

Americans are generous in spirit and that generosity is evidenced by our willingness to help, but Americans expect that generosity will be respected and not abused. We expect those that seek to come here are honest and fair in their petitions. We know that there are survivors of inconceivable and heinous atrocities. We are outraged. We are sympathetic. And more than just sympathy, we are willing to open our country to provide those in need with a refuge, with a sanctuary with safety and dignity. And about all we ask in return is that the system not be abused and that that generosity of spirit not be taken advantage of.

So today we will examine how we can protect the integrity of our asylum program while ensuring we will not extend this special benefit to those who seek to take advantage or, worse yet, exploit American generosity to do us harm.

With that, I would recognize the gentlelady from California, the Ranking Member.

Ms. LOFGREN. Thank you, Mr. Chairman. And I appreciate your comments recognizing the importance of the asylum system.

America really stands as a beacon of hope and freedom around the world, and part of being that beacon of hope and freedom is our refugee program and our asylum program. Really, if you think back to the origins of the current asylum program, it was really put into shape after World War II when, much to our continuing shame, the United States turned away Jewish refugees who were fleeing Hitler who were then returned to Germany and who died in concentration camps. That was a wake-up call to the world and to the United States, and we put in place our asylum system.

Recently there has been discussion of broad immigration reform, and I was encouraged that there might be some opportunity to move forward on a bipartisan basis. I still have that hope. But there has been concern expressed not only about immigration reform and the President, which I think is quite misplaced since the President has removed 2 million people in his first 5 years in office, more than President Bush removed in his 8 years in office, and there is vigorous enforcement of the immigration laws.

But I also think that there is concern—and I have discussed this with the Chairman and I think I understand the origin—with the title of this hearing and the allegations not by the Chairman but by some that this is a system racked with fraud.

Recently The Washington Times did a report citing an internal assessment of the asylum system, prepared by USCIS, but the report was from 2009. And they said that the audit finds the asylum system ripe with fraud. That is actually a gross mischaracterization of the USCIS assessment. And the odd thing is that the 2009 report was actually an assessment of what was going on in the year 2005, a number of years before President Obama actually was elected President. So I think it is important that we deal with the facts.

And certainly the asylum system is not perfect. No system that we as people can design—we always want to improve our situation, but we need to recognize also that the system in place in 2005 is not the same as today. We need to get the facts out and recognize that the has done a great deal since 2005 to combat fraud, including placing fraud detection officers at all asylum offices, placing fraud detection officers overseas to aid in overseas document verification, hiring document examiners and increasing the capacity to do forensic testing of documents, providing its officers access to numerous additional databases to assist in fraud detection, and entering into additional information sharing agreements with foreign governments to combat fraud.

I am happy to support smart changes that further assist USCIS to eliminate fraud and advance its mission to assess asylum claims in a fair and timely manner. These changes, I think, could include hiring additional asylum and fraud detection officers to reduce backlogs, balance workloads, and expand the infrastructure for investigating potential fraud in asylum applications; dedicating additional personnel and resources to overseas document verification so that all investigative requests are completed in a timely manner; taking steps to ensure that ICE actually investigates referrals from USCIS fraud detection officers concerning asylum fraud; ensuring

that ICE and DOJ dedicate appropriate resources to fully prosecute persons and groups that defraud the immigration system; and finally, assisting USCIS to expand training with respect to detecting and investigating fraud in asylum and other immigration applications.

But we should make these changes not with our hair on fire because, as we address abuse, we must also address the many ways that the current system fails to protect legitimate and vulnerable refugees. We must ensure, for example, that our immigration courts are properly staffed and resourced. As funding for enforcement skyrocketed in recent years, funding for the courts lagged behind, leading to massive backlogs. These delays both increased the potential for fraud and prevent timely protection for legitimate refugees. Adequate resources are essential for maintaining the integrity and effectiveness of the system.

I also think we should reconsider the 1-year filing deadline which is barring bona fide refugees from receiving asylum while undermining the efficiency of the asylum system. The deadline does not bar cases because they are fraudulent, it bars them based on the date they are filed, regardless of the applicant's claim. And we certainly know of cases, a Christian woman who was tortured and abused whose valid claim was denied because of this arbitrary standard. We need to take a look at that.

Our country can strengthen the integrity of the immigration system and also provide asylum to refugees in a timely, fair, and efficient manner. This fair and balanced approach is consistent with the country's values and commitments, and I believe it is something that all of us on this Committee can embrace. Certainly none of us want to have a fraudulent situation, but we do want to maintain our Nation's status as a beacon of light and freedom in the world.

And with that, Mr. Chairman, I yield back.

Mr. GOWDY. I thank the gentlelady.

The Chair will now recognize the Chairman of the full Committee, the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. Thank you for holding this hearing. Thank you for the prompt action to get the assistance of the Capitol Police to remove the protestors. That was an unfortunate, but very necessary step to take.

And you know, when you see the passion of people like that about this issue, one would only hope that they would actually come to a hearing like this and stay and listen to the array of different points of view that they will hear from our panelists and from the Members of the Committee and the questions from the Members of the Committee that reflect upon the seriousness and complexity of these issues that need to be addressed. I know that every hearing that I attend I learn more about how to solve the problems that we have with our American immigration policy.

So thank you for allowing us to proceed in this manner.

The United States of America is extremely hospitable to immigrants, asylees, refugees, and those needing temporary protected status. Our Nation's record of generosity and compassion to people in need of protection from war, anarchy, natural disaster, and persecution is exemplary and easily the best in the world.

We have maintained a robust refugee resettlement system, taking in more United Nations designated refugees than all other countries in the world combined. We grant asylum to tens of thousands of asylum seekers each year. We expect to continue this track record in protecting those who arrive here in order to escape persecution.

Unfortunately, however, because of our well justified reputation for compassion, many people are attempting to file fraudulent claims just so they can get a free pass into the United States.

The system becomes subject to abuse and fraud when the generous policies we have established are used for ideological goals by the Administration. It also becomes subject to abuse when people seek to take advantage of our generosity and game the system by identifying and exploiting loopholes.

The House Judiciary Committee recently obtained an internal document demonstrating that U.S. Citizenship and Immigration Services' National Security and Records Verification Directorate's Fraud Detection and National Security Division completed a report in 2009 on asylum fraud in cases considered by asylum officers. They studied a sample of asylum applications that were affirmatively filed between May and October 2005. Pursuant to the report, a case was classified as fraudulent if reliable evidence pertaining to the applicant's asylum eligibility proved a material misrepresentation and the evidence was more than just contradictory testimony given by the applicant. If the indicators of fraud existed and pertained to the applicant's asylum eligibility, but fraud could not be confirmed by evidence external to the applicant's testimony, the case was classified as exhibiting "indicators of possible fraud." A total of 12 percent of cases, 29 out of 239, were found to have proven fraud and an additional 58 percent, 138 cases, had indicators of possible fraud, for a total 70 percent rate of proven or possible fraud.

The Obama administration refused to make these findings public and has, to my knowledge, done nothing to address the concerns raised by the report. Instead, they felt their time was better spent contesting the report's methodology and hiring private contractors to rebut the findings of fraud. We have asked USCIS for any reports ever generated by the private contractors, but no such report has been provided to date.

The only check suggested in the 2009 FDNS report that is mandatory, and has been since 2006, is the US-VISIT check. All other checks in the report are currently discretionary. The report also states: "As a result of information gleaned from this study, FDNS plans to issue internal agency recommendations to improve USCIS processes and fraud detection." According to DHS, recommendations were made since 2009 but as of yesterday they have not told us either what those recommendations were or whether they had ever been implemented. Finally, USCIS made clear that under this Administration, no other fraud reporting analysis has been generated.

To make matters worse, under Obama's tenure, approval rates by asylum officers have increased from 28 percent in 2007 to 46 percent in 2013. If an asylum officer does not approve the application, it is referred to an immigration judge. Approval rates by im-

migration judges of affirmative applications have increased from 51 percent in 2007 to 72 percent in 2012. Combining these two bites at the apple, the vast majority of aliens who affirmatively seek asylum are now successful in their claims. This does not even take into account the appellate process.

Additionally, when DHS grants an asylum application, the alien becomes immediately eligible for major Federal benefits programs that are not even available to most legal permanent residents, or not available to them for years. These programs can provide many thousands of dollars a year in benefits to each eligible individual.

In 2012, 29,484 aliens were granted asylum. I am sending a letter to the Government Accountability Office to determine what the cost of these benefits are to the American taxpayer. If 70 percent of these grants were made based on fraudulent applications, American taxpayers are being defrauded out of hundreds of millions, if not billions, of dollars each year.

I am certainly not calling for reduced asylum protections. On the contrary, asylum should remain an important protection extended to aliens fleeing persecution. We merely seek to improve the integrity of the existing asylum program by reducing the opportunities for fraud and abuse while ensuring adherence to our Nation's immigration laws.

An overwhelming amount of fraud exists in the process and little is done to address it. Individuals are showing up in droves at the border to make out asylum claims. Adjudicators have the general mindset that they must get to "yes" in order to have successful careers. It is apparent that the rule of law is being ignored and there is an endemic problem within the system that the Administration is ignoring. Failing to address these problems undermines the good will and trust necessary to develop a common sense, step-by-step approach to improving our immigration laws. I look forward to addressing this disturbing problem today.

Thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Virginia.

The Chair will now recognize the gentleman from Michigan, the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Gowdy.

Less than 2 weeks ago, I was optimistic that we had turned a corner in the immigration debate when the Republican leadership released its new set of immigration principles. And although the principles were vague and subject to a wide range of interpretations, they nevertheless signaled real promise. A promise that my colleagues finally recognized the damage that our broken immigration system causes every day to families and businesses throughout the country. And a promise that this House would finally move forward on reforming the system for the good of us all.

But just 1 week later, all that promise is all but gone. Why the sudden turnaround? Apparently it is all President Obama's fault. Despite record deportations and the lowest level of border crossings in the last 40 years, my Republican colleagues say, in effect, they do not trust the President to enforce our immigration laws.

Now, let me take this moment to assure them that the President is enforcing our immigration laws vigorously, a lot more than some of us would like. My district office, like many other district offices

in the House, can attest to this. Our case workers spend days dealing with heart-wrenching deportations and family separation. Nevertheless, this record level of enforcement does not seem to be enough.

And so this weekend, the Senator from New York, Mr. Schumer, offered a different approach. Pass immigration legislation now but have it take effect in 2017 when a new President is sitting in the Oval Office. Many Republicans rejected this proposal as soon as they heard it. Even though the offer would take Obama out of the equation, they did not like it. Why? Those who gave a reason said it was because they still do not trust Obama.

Now, this blame game and disregard for the facts is now being reflected in today's hearing, unfortunately. Last week, The Washington Times published an article about fraud in the asylum system citing a 2009 report from the United States Citizenship and Immigration Services. That report concerned asylum claims from 2005, 3 years before President Obama took office. Nevertheless, our majority seems to be blaming Obama for that too, and they refuse to recognize that the system in place today, while not perfect, is a vastly improved one from the system in place in 2005. The 2009 fraud report itself details several ways in which the system has been improved since 2005. But I guess it is just easier to blame President Obama.

The issue we will address today is important. We know the number of people seeking asylum at our borders and in the interior of our country has increased over the last 2 years, and in some places at the border, the increase has been quite dramatic. It is important that we figure out why this is happening because only after that, can we figure out how to deal with it in a responsible way. But that is not all we have to do. Fixing our broken immigration system still lies ahead for the Congress, and I stand ready to do the work that needs to be done.

So let us begin the second session by bringing up the bipartisan immigration bill that has already passed the Senate. If not, let us instead consider some of the Republican bills that I understand may be in the works. Let us just do something because doing nothing is no more an option for us than it is for the families that are being torn apart each and every day.

I thank the Chairman and yield back.

Mr. GOWDY. I thank the gentleman from Michigan.

Before we recognize our witnesses, I would ask unanimous consent to add to the record, number one, a report by USCIS entitled "I-589 Asylum Benefit Fraud and Compliance Report," and number two, a DHS report entitled "Detained Asylum Seekers Fiscal Year 2012 Report to Congress."*

I will now recognize the gentlelady from California who I think also has——

Ms. LOFGREN. Thank you, Mr. Chairman. I would like to ask unanimous consent to place into the record statements from the Evangelical Coalition, (the National Association of Evangelicals, the Ethics and Religious Liberty Commission of the Southern Baptist Convention, the National Hispanic Christian Leadership Con-

*See Appendix for this submission.

ference, Liberty Council, World Relief); the U.S. Conference of Catholic Bishops; the Lutheran Immigration and Refugee Service; Church World Service; Hebrew Immigrant Aid Society; the United Nations High Commissioner for Refugees; the Center for Victims of Torture; Torture Abolition and Survivors Support Coalition; the National Immigrant Justice Center; the National Immigration Forum; Immigration Equality; and the American Immigration Lawyers Association, in opposition to changes that would hinder protection of refugees and asylees.

I would also ask unanimous consent to place into the record a report from the Congressional Research Service outlining trends in asylum claims, pointing out that we are actually much lower in terms of asylum than in past years; and a letter from the Honorable Carlos Gutierrez, Governor Tom Ridge, Senator Mel Martinez, Governor Sam Brownback, Governor Jeb Bush, Grover Norquist, and others in support of refugees; as well as a letter from a broad coalition, including the Jubilee Campaign, National Association of Evangelicals, Southern Baptists, and others in support of changes to assist in refugee/asylee adjudication.**

Mr. GOWDY. Without objection.

We are delighted to have our panel today. I will begin by asking you to please all rise so I can administer an oath to you.

[Witnesses sworn.]

Mr. GOWDY. May the record reflect all the witnesses answered in the affirmative.

I am going to introduce you en banc, and then—you can sit down. I am going to introduce you en banc, and then I am going to recognize you individually for your opening statement. The lights in front of you mean what they traditionally mean in life: yellow means speed up and red means stop.

So, first, Mr. Louis Crocetti. Recently retired, Mr. Crocetti served the public for 37 years, 36 of which were dedicated to administering and enforcing U.S. immigration law. Mr. Crocetti started his immigration career as an immigration officer and progressed through the ranks to hold career Senior Executive Service level positions in both the Department of Justice and Department of Homeland Security.

Shortly after retirement, Mr. Crocetti established a small business consultancy to help agencies and companies improve their effectiveness, efficiency, and integrity of current immigration-based policies, processes, programs, and operations.

Mr. Crocetti holds degrees in criminal justice and jurisprudence from the University of Baltimore.

Mr. Jan Ting. If I mispronounce somebody's name—and I am sure I will—I apologize in advance. Mr. Ting currently serves as Professor of Law at the Temple University Beasley School of Law where he teaches immigration law, among other courses. In 1990, he was appointed by President George H.W. Bush as Assistant Commissioner for the Immigration and Naturalization Service of the U.S. Department of Justice. He served in this capacity until 1993 when he returned to the faculty at Temple.

**See Appendix for these submissions.

He received an undergraduate degree from Oberlin College, an M.A. from the University of Hawaii, and a J.D. from Harvard School of Law.

Mr. Hipolito Acosta served as the District Director of the U.S. Citizenship and Immigration Services in Houston under the Department of Homeland Security in January 2004. He also assumed the leadership of legacy INS Houston District in August 2002 and served in that capacity until the creation of the Department of Homeland Security. Mr. Acosta began his career as an agent with the U.S. Border Patrol where he received the Newton-Azrak Award, the highest recognition given by the U.S. Border Patrol for courage and heroism displayed in the line of duty.

Following his retirement, Mr. Acosta co-founded and is the managing partner of B&G Global Associates, an investigative training and security company.

Mr. Acosta graduated from Chicago State University and Sul Ross State University.

And finally, Ms. Eleanor Acer currently serves as Director of Human Rights First Refugee Protection Program where she oversees Human Rights First's pro bono representation program and advocacy on issues relating to refugee protection, asylum, and migrants rights. Under her leadership, Human Rights First partners with volunteer attorneys in the United States to obtain asylum for more than 90 percent of its refugee clients.

Before working for Human Rights First, Ms. Acer was an associate handling Federal litigation at Kirkpatrick and Lockhart.

She received her J.D. from Fordham University School of Law and her B.A. in history from Brown.

With that, welcome to each of you. Mr. Crocetti, we will start with you and recognize you for your opening statement.

TESTIMONY OF LOUIS D. CROCETTI, JR., PRINCIPAL, IMMIGRATION INTEGRITY GROUP, LLC

Mr. CROCETTI. Thank you, Chairman and Committee Members, and thank you for the invitation to offer my very first testimony as a private citizen. I think this will be much more enjoyable.

Upon the abolishment of legacy INS and the creation of DHS, I was recruited by senior leaders in the new USCIS to determine the most effective way to detect and combat fraud in our new and extremely vulnerable post-9/11 world. In standing up FDNS, the Fraud Detection and National Security, we were in urgent need of data that could focus on the most vulnerable areas. At this point, both the GAO and the 9/11 Commission had issued reports concluding that our legal immigration system was being used to further criminal activities, the most significant of which is known terrorists who entered and embedded themselves in the United States between the 1990's and 2004.

In the absence of data from legacy INS, we developed two tools or programs that would help us collect and analyze data so that we could determine the types and volumes and indicators of fraud that existed and focus our efforts accordingly, as well as develop the systems, analytics-based systems, to make an effort to identify the fraud indicators at the time filing on the front end, which would have been unprecedented.

Today I will talk about the benefit fraud assessments because it relates directly to the benefit fraud assessment we are talking about. The other tool, however, I would like you to research is the Administrative Site Visit and Verification Program, which conducts post-approved compliance reviews to determine fraud rates and percentages, an essential tool that needs to continue to be done.

Between 2005 and 2008, FDNS completed eight benefit fraud assessments, but due to internal differences of opinion about methodology and other issues, we were only able to finalize four. The asylum-based BFA is one of the reports that did not get finalized. In that the draft report does not contain one of the classification levels in Executive Order 13526, entitled "Classified National Security Information," i.e., top secret, secret, or confidential, I am willing to discuss it here in the interest of national security and enhancing the integrity of our legal immigration system.

One thing that is important to understand is the evidentiary standard for asylum, a very low burden. The applicant is more likely than not to be persecuted. If what he or she is saying is true and there is no negative or derogatory information to challenge the claim, asylum is likely to be granted. There are no mandatory documentary requirements. The possession of fraudulent identity or other documents or certain misrepresentations such as those to get visas and travel documents do not automatically disqualify an applicant.

The decision is discretionary and based almost entirely on credibility. An applicant must, however, establish eligibility and present a persuasive claim.

The methodology and case review process that we engaged consisted of taking a random sampling of 8,555 cases between May 1 and October 31st, 2005. And, yes, Congresswoman, that is very old, old data, which is one of the things we must question. Why do we have to use old data? These cases were either approved or they are still pending as of January 1, 2006.

In the methodology review process, there were two stages, levels of review. The first stage was FDNS field officers in the field would pull the cases in their jurisdictions and undertake a review. The second stage involved forwarding their findings to headquarters for a senior review team to look at the—holistically as a team to look at the findings and see if there were any necessary changes.

In the stage one process, individual FDNS officers reviewed all the available documents, files, and oftentimes more than one file and other records. They also conducted a battery of government and open-source systems checks. If no inconsistencies or negative/derogatory information existed, they classified the case as "no fraud indicators" and forwarded it on to headquarters for the second level review.

If inconsistencies existed or derog or any negative information, they felt an overseas verification of facts or information would be helpful, they requested overseas investigation.

If an overseas investigation was not likely to be of value to help in the verification of information or events, they categorized the case as containing "indicators of possible fraud" and then forwarded it to headquarters for second-level review.

If evidence of proven fraud, they simply categorized the case as "proven fraud" and sent that into headquarters.

The actual study population consisted of 239. And working with our Department of—DHS Office of Statistics using and the principles of accounting at a confidence level of 95 percent and a margin of error rate of plus or minus 5 percent. There was a finding of fraud in 29 of those cases, so that is 12 percent.

I think one of the most important, however, percentages to remember is the number of cases that did not contain fraud, only 72 of the 239 cases. Thirty percent of those cases all those FDNS officers and the senior review team categorized as "no fraud."

One hundred thirty-eight of the 239, or 58 percent, contained possible fraud indicators. When including 27 of the uncompleted overseas verification requests, that increased to 69 percent of possible indicators of fraud.

There were only 59 of the 239 cases to overseas for information verification. Twenty-six of those 59, or 44 percent, were completed. We were unable to complete 17 of those cases because of competing priorities within the State Department and the unavailability of CIS in most of those locations.

Initially all 59 overseas verification request cases were determined to contain no fraud indicators, but in the second-level review, the headquarters team did recategorize six, which is a very insignificant number of recategorization, reflecting the FDNS officers did a very good job in their review.

One hundred five of the 138 cases, 76 percent, were found to have indicators of fraud and were placed in removal proceedings. We do not have data on what happened to those cases, but that is another issue with regard to the breakdown of data collection and reports between DOJ and DHS, specifically EOIR and CIS.

Thank you.

[The prepared statement of Mr. Crocetti follows:]

Testimony Before the
House Judiciary Committee
Subcommittee on Immigration and Border Security
For Hearing Entitled:

Asylum Fraud: Abusing America's Compassion?

Testimony of

Louis D. Crocetti, Jr.

Principal – Immigration Integrity Group, LLC
Former Associate Director,
Fraud Detection and National Security (FDNS),
U.S. Citizenship and Immigration Services (USCIS)

February 11, 2014

10:00 AM

2141 Rayburn House Office Building

Mr. Chairman and Committee Members, it is an honor for me to be here today to contribute to efforts aimed at enhancing the integrity of this country's asylum program. Prior to proceeding with my testimony on asylum fraud, please allow me to provide you with some background information about myself.

I retired from public service in September 2011, after more than 35 years administering and enforcing immigration laws for both the Department of Justice (DOJ) and Department of Homeland Security (DHS). At the time of retirement, I was serving as the Associate Director of U.S. Citizenship and Immigration Services' (USCIS) Fraud Detection and National Security Directorate (FDNS), for which I was also the architect. Shortly after retirement, and given my ongoing passion to enhance the integrity of this country's legal immigration system, I created a small business consultancy named the *Immigration Integrity Group* to support government and business efforts aimed at improving the effectiveness and efficiency of current immigration programs and operations, and achieving comprehensive immigration reform.

When the legacy INS was abolished in 2003, I was the Director of the Baltimore Office, responsible for administering and enforcing immigration laws throughout the State of Maryland. As such, I managed the immigration benefits (services), air and seaport inspections, investigations, detention, and deportation programs (enforcement). Prior to that position, I served as legacy INS's Associate Commissioner of Examinations, which was rather somewhat analogous to USCIS, as I was the career senior executive responsible for immigration services-based policy and programs, and also had oversight authority of the Administrative Appeals Office.

Upon the abolishment of legacy INS and the birth of DHS, I was recruited by senior leaders in USCIS primarily because of my experience managing both immigration services and enforcement programs. I was specifically asked to research the impact of separating immigration enforcement and services, and placing the respective missions in three different agencies within DHS. The focus was on positioning USCIS to effectively detect and combat immigration benefit fraud in a post 9/11 environment.

In doing my research, I came across GAO-02-266 (January 2002), entitled *IMMIGRATION BENEFIT FRAUD: Focused Approach Is Needed to Address Problems.* Here, the Government Accountability Office reported that this Country's legal immigration system was being used to further illegal activities such as human and narcotics trafficking, and activities that threaten national security and public safety. It also pointed out that legacy INS did not have an anti-benefit fraud strategy, did not make combatting fraud a priority, and did not possess a mechanism in which to collect and report data aimed at identifying the volume and type of benefit fraud that existed. The recommendations in this report became the blueprint of USCIS's anti-fraud program. The key actions undertaken by USCIS were:

1. Developed a joint anti-fraud strategy and operation with Immigration and Customs Enforcement (ICE).
2. Developed the Fraud Detection and National Security Data System (FDNS-DS) to collect case and operational data.
3. Developed a background check program, inclusive of policies, procedures, and increasing electronic capabilities to screen all applicants, petitioners, and beneficiaries seeking immigration benefits.
4. Made anti-fraud and the screening of all persons seeking benefits an agency priority.

Another report that proved helpful in standing-up FDNS was the 9/11 Commission Report issued in July 2004, which cited asylum and other immigration benefit fraud as opportunities for terrorists to enter and embed themselves in the U.S. The following year (2005), a former 9/11 Commission counsel released a study reflecting that of the 94 foreign-born terrorist known to operate in the U.S. between the early 1990s and 2004, 59 (nearly two-thirds) committed immigration fraud, and they did so multiple times (79 instances).[1]

Faced with the Congressional reporting requirement and no legacy INS data, FDNS developed a Benefit Fraud Assessment (BFA) Program[2] as a mechanism in which to collect and analyze data that would enable us to determine the types, volumes, and indicators of fraud by form type. In the absence of real data, we used a combination of anecdotal information and experience to identify the forms we felt posed the greatest risk. I realize this wasn't a very scientific approach, but it was the best we could do with what we had, and it served our internal purpose.

Between 2005 and 2008, FDNS completed field fraud assessments on eight form types[3], but due to increasing internal differences of opinion and concerns about methodology, we were only able to finalize four. The asylum-based BFA, which I will address shortly, is one of the reports that did not get finalized. Before discussing that draft report, it's important to understand that the BFA Program was initially designed to be an internal tool not used for public dissemination. They were conducted to focus on the major areas of abuse and vulnerability, and assist in the preparation of field guidance and the development of business rules that would guide the development of analytics-based (automated) search engines.

As word of the reports became public knowledge, particularly the high fraud rates, the demand for the reports grew, especially from certain members of congress and the media. Because of such demand, the agency decided to start preparing the BFCAs for public knowledge, beginning with the H1-B BFCA. As a result, the reports became more politicized, content and language changed, as did the ability to get corporate concurrence. USCIS policy required formal review and concurrence from Directorates, the Office of Policy and Strategy, and the Office of Chief Counsel before a report could be finalized and released. However, in order for there to be accountability and transparency, the accurate data and content must be provided to Congress and the public.

With regard to concerns about methodology, I do believe the draft BFAs could and should have been corporately approved and finalized, if for no other purpose than to be used to focus internal anti-fraud efforts. It must also be pointed out that FDNS did not proceed in a vacuum. We consulted and engaged the DHS Office of Statistics (OS) in the development of the random sampling methodology, which I understand consisted of a Rate of Occurrence not more than 20%, a Confidence Level of 95%, and a reliability factor of plus or minus 5%. FDNS also consulted OS during the BFA process, which included seeking review and feedback on individual findings and recommendations, and the language used to convey such. Even the GAO evaluated the

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[1] *See testimony of Janice Kephardt, former counsel, National Commission on Terrorist Attacks Upon the U.S., before the Subcommittee on Immigration, Border Security, and Citizenship and the Subcommittee on Terrorism, Technology, and Homeland Security, Senate Judiciary Committee, March 14 2005.*

[2] *This program was later renamed the Benefit Fraud and Compliance Assessment Program to better distinguish fraud from non-compliance.*

[3] *Those assessments were of religious worker petitions, applications to replace lost or stolen permanent resident cards, various nonimmigrant and immigrant employment-based petitions, marriage-based petitions, Yemini relative-based petitions, and asylum requests.*

methodology and determined it provided a reasonable basis for projecting the frequency with which fraud was committed within the time period for which the samples were drawn. They also reported to have assessed the data derived from the USCIS Performance Analysis System (PAS) and determined that these data were sufficiently reliable for the purpose of the review. [See GAO-06-259[4] (March 2006), entitled *IMMIGRATION BENEFITS: Additional Controls and a Sanctions Strategy Could Enhance DHS's Ability to Control Benefit Fraud.]*

In the interest of advancing the BFCA Program and recognizing that FDNS does not possess expertise in social science or advanced research and analysis (as they are immigration officers), I relinquished the lead of the BFCA program to USCIS' Office of Policy and Strategy (OPS) in January 2010. I also authorized the transfer of FDNS resources to OP&S to hire the appropriate experts as well as obtain contract support. I understand that the USCIS OP&S recently published a solicitation for contract services that provide for the collection and analysis of data using a variety of methods, and the development of research and evaluation reports, papers, and services to be determined and has proposed to similar studies in the past. However, to date I am unaware of any immigration benefit fraud assessments, risk assessments, studies, or any other fraud-based research and analysis being performed since the last BFCA was conducted in 2008. Nevertheless, I remain hopeful that similar assessments will be conducted in the future – either by the DHS's own impetus or at the will of Congress.

Critical to the integrity of any benefit or entitlement program is the ability to detect, confront, deter, and prevent fraud. To do this effectively, we must be both proactive and reactive; proactive in the sense of performing fraud and risk assessments, compliance and quality assurance reviews, and other studies and analyses, and reactive as in conducting investigations of individually suspected fraud cases. One of the reasons our legal immigration system is so abused is because DOJ and now DHS have chosen to be reactive, and even then, without the resources and other tools to be effective. Historically, immigration services components tend to be more focused and proactive on increasing production and reducing processing times, than enhancing quality and integrity. As found by both GAO and the 9/11 Commission, this is extremely dangerous in today's post 9/11 world.

USCIS must have this information to prepare guidance and train personnel, and develop the business rules needed to guide the development of analytics-based technology (fraud engines), so that fraud indicators and other risks can be identified electronically at the time of filing. It needs the right combination of experts to develop the methodologies, collect and analyze the data, and prepare the reports and analyses needed to render objective findings and recommendations. It needs less internal and external interference, and more objective and assertive support from senior leadership within DHS and Congress. Given the history of partisan politics and its influence on incumbent Administrations, I implore Congress to legislate the oversight and internal controls needed to instill integrity in our legal immigration system.

With regard to the draft asylum BFCA, in that it is not designated under any of the three classification levels identified in Executive Order 13526, entitled "Classified National Security Information" (i.e., top secret, secret, confidential), I am willing to discuss it in the interest of national security and enhancing the integrity of this country's legal immigration system.

[4] *This review was conducted upon the request of the Subcommittee on Immigration, Border Security, and Claims Committee on the Judiciary to determine what actions had been taken since the 2002 to address immigration benefit fraud.*

OVERVIEW OF ASYLUM BFCA

General Eligibility for Asylum

- Physically present in the U.S.,
- Applies for asylum within one year of arrival, and
- Seeks protection on the basis of having been persecuted or having a well-founded fear of persecution upon return to his/her country *on account of race, religion, nationality, membership in a particular social group, or political opinion.*

Standard of Proof

- Low burden and standard of proof
  - *More likely than not* to be persecuted.
  - *If what he/she is saying is true,* and no evidence exists to the contrary…
- Decision is discretionary, but applicant must establish eligibility and present a persuasive claim.
- No actual documentary requirements.
- Mere possession of fraudulent identity and other documents, or misrepresentations made in obtaining a passport or visa to travel to the U.S. doesn't automatically render an applicant ineligible as refugees fleeing persecution tend to do what they can to escape the persecution.

Objective of BFCA

- To determine the scope and types of fraud, and the application and utility of existing fraud detection methods.
- INTERNALLY: To identify weaknesses and vulnerabilities, and propose/undertake corrective action.

Study Population

- Random sampling of pending and completed (approved/referred) cases with USCIS between May 1 and October 31, 2005; that population being 8,555 applications.
- Known as "affirmative filings" in that they filed with USCIS and are not in removal proceedings ("defensive filings") before an immigration judge (EOIR).
- Worked with DHS/OS and utilized General Principals of Accounting in determining sampling size, which was 239 cases.
- Applicants represented more than 50 countries.
- Highest representation was from China, Haiti, Colombia, and Mexico.

Case Review Process / Methodology

- Stage One:
  - FDNS Immigration Officers (IOs) reviewed applicants USCIS file(s), i.e. application, supporting documents, and other available documents and records.
  - FDNS IO conducted a battery of government and open source (commercial/public) systems checks (Databases utilized should include CIS, SC-CLAIMS/CLAIMS 3, RAPS, FDNS-DS, IBIS/TECS, SEVIS, ADIS, USVISIT/IDENT, DOS-CCD, LexisNexis, Accurint, Choicepoint, and Canadian Immigration Systems.)
  - If no derogatory/negative information was disclosed, case was categorized as "*No Fraud Indicators*" and forwarded to Headquarters (HQ) for review (Stage Two).

  - If inconsistencies, derogatory, or negative information (*fraud indicators*) were disclosed and the IO believed said suspicion could be confirmed overseas, he/she would prepare an Overseas Verification Requests (OVR).
  - If the FDNS IO concluded sufficient evidence existed to categorize the case as "*Proven Fraud*" without an OVR, he/she would do so and then forward the case to HQ for review (Stage Two).
  - If the FDNS IO concluded that an OVR wasn't likely to be of value and/or it didn't meet the OVR criteria, notwithstanding the presence of derogatory information, he/she would categorize the case as containing "*Indicators of Possible Fraud*", and then forward it to HQ for review (Stage Two).
- Stage Two consisted of a team of more senior immigration officers, attorneys, and managers reviewing the cases and findings of the FDNS IOs.

Key Findings

- Of the 239 randomly selected cases, 29 (12%) were determined to be fraudulent.
  - 12 (41%) of the 29 fraud cases (5% of the study population) were granted prior to the BFCA.
- 72 (30%) cases did not contain any fraud indicators.
- 138 (58%) of the 239 exhibited possible indicators of fraud
- 165 (69%), when including 27 uncompleted OVRs.
- 59 (25%) of the 239 cases containing fraud indicators were sent overseas for event/information verification by either USCIS or DOS personnel.
- 26 (44%) of 59 OVRs were completed; 17 (65%) resulted in a finding of fraud.
- Initially all 59 OVR cases were determined to contain fraud indicators, but in second review phase, HQ re-categorized 6 as "no fraud found".
- 105 (76%) of the 138 fraud cases were placed in removal proceedings where the claim was to be reviewed by an immigration judge. [Do not have results of other agency/department (EOIR) data.]

Influencing Factors

- Unlike other immigration benefit seeking applications (form types); there are no petitioners or beneficiaries to question, nor job offers, academic degrees, or experience to verify.
- Claims are sensitive and confidential, so the types of inquiries and verifications that could be made were very limited.
- Not easy to discern legitimate claims from illegitimate, absent conflicting and otherwise derogatory information that destroys or weakens the applicant's credibility.
- Scarcity of resources
  - Insufficient personnel overseas to verify documents, events, and other information. [Couldn't even perform 27 overseas verifications.]
  - OVRs very time-consuming and capabilities vary from country to country.
  - Due to competing priorities and limited resources, DOS wasn't as helpful as we had hoped.

Criteria/Factors Used to Determine Credibility

- Identity established? Documented? Questionable?
- Claim consistent with country conditions?
- Evidence present to support claim?
- Events and/or other information verifiable?
- Past residences and travels an issue?
- Applicant or systems checks disclose any fraud or criminal activity?
- Any inconsistencies, questionable, or negative information?

What can be done to more effectively combat and deter fraud?

1) Technology
   - Engage analytics-based technology that electronically, upon filing, identifies known and suspected fraud indicators, including boilerplate language, conflicting records, and other questionable associations. Include EOIR cases.

2) Screening / Systems Checks
   - Expand asylum applicant screening to include all of the checks done for BFCA.

3) Overseas Verifications
   - Enhance capability of USCIS to verify information overseas within 30 days; NTE one week for credible fear determinations.

4) Interpreters
   - Contract and manage interpreters.
   - Require background checks and perform periodic financial, travel, and other checks.

5) Country Conditions
   - Create an Intelligence Program responsible for preparing ongoing asylum and refugee-based intelligence reports and analyses focused on recent world events, travel, and other patterns.
   - Prioritize focus on top five countries for which their nationals are seeking asylum.

6) Internal Controls
   - Legislate specific internal controls such as compliance reviews, fraud assessments, and other studies and analyses.
   - Require annual reports to Congress.

7) Information Sharing and Collaboration
   - Enhance interagency (EOIR/ICE/USCIS) information sharing and anti-fraud efforts.
   - Develop an FDNS Program in EOIR.
   - Have EOIR FDNS officers partner with ICE, USCIS, and CBP anti-fraud and intelligence programs.
   - Require annual reports from DOJ (EOIR) and DHS. (CBP/ICE/USCIS).

8) Re-engineer Removal Proceedings
   - The current administrative removal system is not structured or equipped to deal effectively with the number of individuals unlawfully present in the U.S. Adding more judges and courtrooms is not going to fix the problem, nor is the ever-increasing exercise of prosecutorial discretion. We need to totally revamp the system to more effectively remove those who pose a threat to national security and public safety, deter persons from willfully violating immigration laws, and ensure those entitled to some form of relief receive the consideration they deserve. We accomplish very little with the current system.
   - Recommend expanding the use of expeditious removal authority by allowing the establishment of alienage and unlawful presence to be sufficient grounds to remove unauthorized foreign nationals who do not possess a fear of persecution or torture upon return and who lack any other form of statutory relief.

9) Deterrence / Prevention / Sanctions
   - Require all foreign nationals desiring to work in this country, whether temporarily or permanently, to have their biometrics collected, background checks conducted, and upon being determined to be eligible, issued a secure identity and employment authorization card. Require the possession of this card to work in this country without exception. Eliminate the magnet that encourages unauthorized persons to enter and/or remain in this country in violation of immigration laws.
   - Administrative Sanctions
     - Issue monetary fines.
     - Prohibit those proven to have committed or supported the commitment of immigration fraud from applying for and receiving immigration benefits for a specified period of time.
     - Require payment of fine and demonstration of rehabilitation prior to lifting bar.
     - Don't just penalize the applicant or beneficiary, but also the petitioner, and if represented, lawyers and other representatives proven to have engaged in fraud.
   - Increase requirements and controls on those authorized to provide legal and other services, including preparers and interpreters. Establish a formal application and registration process; require minimum educational and training requirements, including continuing legal education.

10) Enhance National Security Checks
   - Define and standardize national security check, so that when it's done, it's the same quality check (databases, etc.), regardless of the agency requesting it.
   - To overcome barriers associated with the sharing of information with non-law enforcement agencies, legislate the recognition of USCIS' FDNS Directorate as a law enforcement agency for the purpose of combatting immigration fraud and screening persons seeking immigration benefits to ensure they do not pose a threat to national security and/or public safety.
   - Require recurrent checks of the Terrorist Screening Data Base (TSDB) on all persons granted immigration benefits, both temporary and permanent, up to the fifth year anniversary of naturalization.

Mr. GOWDY. Thank you, Mr. Crocetti.
Mr. Ting?

TESTIMONY OF JAN C. TING, PROFESSOR OF LAW, TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW

Mr. TING. Thank you, Mr. Chairman and Members of the Committee.

In May 2011, the world's attention was focused on the story of Nafissatou Diallo, a hotel housekeeper in New York, who claimed she was raped by Dominique Strauss-Kahn, then the head of the International Monetary Fund and thought to be a likely future President of France.

How did Ms. Diallo, who was born in west Africa, come to be working in New York? She subsequently admitted that while in the U.S. illegally, she concocted a totally false story about being raped in her home country of Guinea in order to obtain legal asylum status in the United States. That admission is why the prosecution of Mr. Strauss-Kahn could not proceed. Ms. Diallo's lawyer opposed dropping the prosecution, arguing that lying in order to get asylum was really not such a big deal, that it was commonly done, and it was the understanding of many people that that is how you get asylum in the United States.

She was not the only successful asylum claimant whose lies are subsequently exposed. Back in 1999, another immigrant, coincidentally also named Diallo, died in New York City as a result of police gunfire and was discovered to have made numerous false claims to gain asylum in the United States. Amadou Diallo had claimed to be an orphan whose parents were murdered, though his parents showed up at his funeral. And he claimed to be from Mauritania although he was actually from Mali.

While many are believed to obtain legal asylum status by lying, most go on eventually to become U.S. citizens and the lies they tell to get status are never uncovered.

The August 1st, 2011 issue of The New Yorker contains an article beginning on page 32 called "The Asylum Seeker" by Suketu Mehta, which tells in detail how illegal immigrants educate themselves on how to construct stories which make them sound like victims of persecution. The article features an asylum claimant who was making a completely bogus claim of having been raped. To strengthen her case, she attends group therapy sessions for rape victims at a public hospital and receives taxpayer-funded medications for her supposed depression, which she throws away.

Such exposures of asylum claims are difficult to uncover, and the difficulties are compounded when the number of asylum applications is increasing. The total number of affirmative asylum applications has more than doubled in the last 5 years, exceeding 80,000 in fiscal year 2013. Over the same 5 years, so-called credible fear asylum applications made at the border have increased sevenfold from less than 5,000 to more than 36,000 in fiscal year 2013. I have seen statistics from USCIS showing an approval rate of 92 percent for credible fear claims in 2013.

What should be done? I have four suggestions.

First and most importantly, all proposed grants of asylum should be routed through the U.S. State Department for comment and an

opportunity to object, as was done when I served at the Immigration and Naturalization Service. I believe many of the career civil servants now working at CIS would support this proposal. Get the State Department involved. I think we can only improve asylum adjudication by restoring a role for the diplomats we trust to represent us in foreign countries who have firsthand experience in those countries and who are required to study their languages and cultures. They can call upon specialized resources in every country to evaluate questionable asylum claims.

Second, I think Congress may want to reconsider the role of "credible fear" in the expedited removal provision of the immigration statute. The statute already provides that "in the case of an alien who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a removal proceeding under section 240." That is the standard that should be applied to all arriving aliens.

Third, just as the credible fear standard may originally have had some utility but has lost value as alien smugglers game the system and spread the stories that work in demonstrating credible fear, so the asylum statute itself, section 208, while a useful addition to our immigration law when added in 1980, may have lost some value as the stories have been spread that work in convincing an adjudicator to grant asylum.

I would like to see Congress consider enhancing section 241(b)(3), withholding of removal, by adding to that some of the benefits of asylum like adjustment of status to a permanent resident, and following to join for spouses and minor children under certain conditions, with a goal of replacing the asylum statute with a single enhanced withholding of removal statute for the protection of refugees. That statute has and will have a higher burden of proof than the asylum statute and should therefore be less susceptible to fraud.

Fourth and finally, one last suggestion. Affirmative applicants effectively get two bites at the apple on asylum. As has been explained, if they are denied by the asylum officer, they get a shot at the immigration judge. And I think there is no reason to allow those two bites of the apple. Congress should consider making the asylum officer rejection determinative before the immigration judge and let the immigration judge rule on other possibilities for relief, including withholding of removal.

That concludes my testimony, and I again thank the Committee for the opportunity to testify.

[The prepared statement of Mr. Ting follows:]

Prepared Statement of Jan C. Ting, Professor of Law, Temple University Beasley School of Law

Thank you, Mr. Chairman and members of the committee, for the invitation to testify on the subject of asylum fraud as an abuse of U.S. immigration law.

In May, 2011, the world's attention was focused on the story of Nafissatou Diallo, a hotel housekeeper in New York, who claimed she was raped by Dominique Strauss-Kahn, then the head of the International Monetary Fund and thought to be a likely future president of France. How did Ms. Diallo, who was born in West Africa, come to be working in New York? She admitted that while in the U.S. illegally, she concocted a totally false story about being raped in her home country of

Guinea, in order to obtain legal asylum status in the U.S.[1] Prosecutors concluded that prosecution of Mr. Strauss-Kahn could not proceed in light of that admission.

While the U.S. has numerical limits on the numbers of legal immigrants it admits every year, it has no numerical limit on the number of refugees it accepts every year on the basis of their claim for asylum because they face persecution in their home country on account of race, religion, nationality, social group, or political opinion. Illegal immigrants, once they enter the U.S. either illegally or by overstaying a temporary visa, have a strong incentive to lie in making an asylum claim in order to obtain permanent legal status to work legally and qualify for becoming a U.S. citizen.

Asylum claims are currently ruled upon either by officers of the Department of Homeland Security or by immigration judges of the Department of Justice in the course of deportation proceedings. If the story is found to be credible and convincing, and to meet the legal standard of a well-founded fear of persecution on account of race, religion, nationality, social group, or political opinion, and if the story-teller has not been convicted of a crime, the request for legal permanent residence in the U.S. on grounds of asylum is usually granted.

Outside groups monitor the adjudicators to identify and apply political pressure on any whose asylum approval rate is lower than the average, or who approve some nationalities less than others, even though each case is supposed to be decided on its own set of facts.

Ms. Diallo is not the only successful asylum claimant whose lies are subsequently exposed. Back in 1999 another immigrant, also named Diallo, died in New York City as the result of police gunfire, and was discovered to have made numerous false claims to gain asylum in the U.S. Amadou Diallo had claimed to be an orphan whose parents were murdered, though his parents showed up at his funeral, and he claimed to be Mauritanian, though he was actually from Mali.[2]

While many are believed to obtain legal asylum status by lying, most go on to eventually become U.S. citizens, and the lies they tell to get status are never uncovered.

The August 1, 2011, issue of the New Yorker contains an article, beginning on page 32, called "The Asylum Seeker" by Suketu Mehta, which tells in detail how illegal immigrants educate themselves on how to construct stories which make them sound like victims of persecution.[3] The article features an asylum claimant from Africa who is making a completely bogus claim of having been raped. To strengthen her case, she attends group therapy sessions for rape victims at a public hospital and receives taxpayer-funded medications for her supposed depression, which she throws away.

Other stories of brazen lies told by illegal immigrants in pursuit of asylum include the case of Adelaide Abankwah, championed by feminist and human rights figures. The U.S. Court of Appeals for the Second Circuit granted asylum to Abankwah in 1999 over the objections of the Immigration and Naturalization Service, which later proved fraud in her application including a stolen name and false passport. She was tried and convicted of perjury and passport fraud.[4]

See also the case of the Nigerian imposter calling himself Edwin Mutaru Bulus whose bogus asylum claim was exposed only after a sympathetic story was published in the New York Times.[5] Xian Hua Chen, an illegal immigrant from China was convicted of perjury on his asylum application.[6]

Such convictions and exposures of false asylum claims are difficult and expensive to attain. And the difficulties are compounded when the number of asylum applications is increasing.[7] The total number of affirmative asylum applications has more than doubled in the last five years, exceeding 80,000 in FY2013. Over the same five

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[1] http://www.dailymail.co.uk/news/article-2018772/Nafissatou-Diallo-Dominique-Strauss-Kahn-lawyers-accuse-maid-using-media-campaign.html

[2] http://www.nytimes.com/1999/03/17/nyregion/his-lawyer-says-diallo-lied-on-request-for-political-asylum.html

[3] http://www.newyorker.com/reporting/2011/08/01/110801fa_fact_mehta

[4] Mary Beth Sheridan, "Ghanian Woman Convicted of Fabricating Tale", Washington Post, Jan. 17, 2003, page A1, http://www.highbeam.com/doc/1P2-246521.html

[5] http://www.nytimes.com/1997/05/24/nyregion/doubts-cast-on-identity-of-nigerian-who-says-he-s-a-political-refugee.html

[6] U.S. v. Chen, 324 F.3d 1103 (9th C., 2003), http://openjurist.org/324/f3d/1103/united-states-v-chen

[7] For a recent story of how aliens are smuggled into the U.S. to make asylum claims, and the pressures on immigration judges who reject those claims, see Frances Robles, "Tamils' Smuggling Journey to U.S. Leads to Longer Ordeal: 3 Years of Detention", New York Times, Feb. 2, 2014, http://www.nytimes.com/2014/02/03/us/tamils-smuggling-journey-to-us-leads-to-longer-ordeal-3-years-of-detention.html

years, so-called "credible fear" asylum applications made at the border have increased sevenfold from less than 5,000 to more than 36,000 in FY2013.[8] I have seen statistics from USCIS Asylum Division showing an approval rate of 92% for credible fear claims in FY 2013.[9]

The concept of "credible fear" was instituted by the former Immigration and Naturalization Service as an informal screening device for the large numbers of Haitian people interdicted via boats on the high seas headed for the United States after the Haitian coup of 1991. The idea was that people interdicted via boats who could not articulate a credible fear that could qualify them for asylum would be repatriated to Haiti without further deliberation.

At that time it was unclear whether the U.S. had any legal obligation to boat people interdicted on the high seas under the Convention and Protocol Relating to the Status of Refugees or under U.S. law. It was hoped that the credible fear determination would satisfy any basic requirement for an individual hearing that might subsequently be required by U.S. courts.

Overwhelmed by increasing numbers of interdicted boat people, President George H.W. Bush in 1992 issued an executive order authorizing the direct return to Haiti of its nationals interdicted on the high seas, without any screening at all.[10]

That policy was harshly criticized by candidate Bill Clinton during the 1992 presidential campaign. Those of us who worked to implement President Bush's policies were gratified when the incoming Clinton administration announced on the eve of inauguration day, that despite earlier criticism, it would continue the Bush administration policy of repatriation to Haiti without any screening interview. The Clinton administration ended up defending that policy against its critics in federal court, and won a significant victory when the U.S. Supreme Court sustained the policy by an 8 to 1 vote and held that neither the Convention and Protocol on Refugees nor asylum and withholding provisions of U.S. immigration law apply to U.S. repatriations from the high seas.[11]

My point is that the credible fear test was developed on the fly as a temporary screening device to facilitate repatriations from the interdictions of large numbers of people on the high seas headed for the U.S. without authorization. It is at best an unintended consequence for the credible fear test to be used to facilitate the entry into the United States of undocumented immigrants who present themselves at the border without having to prove their eligibility for asylum.

Two final points: The increasing numbers of asylum applicants is a not just a problem for the U.S. Anyone looking at recent developments in Western Europe, Australia, Canada, even Israel, can see that for many reasons including the worldwide recession, continuing turmoil and conflict, and rising expectations, the number of asylum seekers who need to be processed has risen and will continue to increase throughout the world. Policy planning should reflect this reality.

And it bears repeating that the international and U.S. legal standard for who is a refugee and therefore eligible for asylum in the U.S., at the discretion of the U.S. government, is more restrictive than the broader, more colloquially used concept of refugee. Those fleeing poverty, joblessness, and economic stagnation in their home countries do not qualify under the legal standard for refugees. Those seeking better education, health care, and opportunities for their children do not qualify as refugees. Those fleeing high rates of crime and generalized violence in their home countries do not qualify as refugees. Those fleeing natural disasters, however acute, do not qualify as refugees.

What should be done?

First, all proposed grants of asylum should be routed through the U.S. Department of State for comment and an opportunity to object.

There's no simple solution to the false asylum claims, but I think the Department of State foreign service officers as a group are better able to determine actual conditions in various foreign countries, and therefore more likely to detect false stories and recognize the truth, than asylum officers or immigration judges based exclusively in the U.S.

The role of the Department of State in the adjudication of asylum claims was reduced and then eliminated because during the Reagan administration, that department was thought to favor asylum claims from countries whose governments the ad-

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[8] Cindy Chang and Kate Linthicum, "U.S. seeing a surge in Central American asylum seekers", Los Angeles Times, Dec. 15, 2013, http://articles.latimes.com/2013/dec/15/local/la-me-ff-asylum-20131215

[9] Data Provided by U.S. Citizenship and Immigration Services (USCIS) to House Judiciary Committee on December 9, 2013

[10] Executive Order 12807, 57 Fed.Reg. 23133 (1992).

[11] Sale v. Haitian Centers Council, Inc., 509 U.S. 155 (1993).

ministration opposed, like Nicaragua, and to reject asylum claims from countries whose governments the administration supported, like El Salvador and Guatemala.

But the reality is there are always going to be some political pressures on these decisions, and there are strong political pressures today on the adjudicators at the Departments of Homeland Security and Justice. Political pressures on asylum adjudications can be mitigated by involvement of the State Department. Adjudicators with high rejection rates can defend themselves by presenting State Department comments.

I think we can only improve asylum adjudication by restoring a role for the diplomats we trust to represent us in foreign countries, who have first-hand experience in those countries, and who are required to study their languages and cultures. They can call upon specialized resources in every country to evaluate questionable asylum claims.

Second, Congress might want to reconsider the role of "credible fear" in the expedited removal provision of the immigration statute.[12] The statute already provides that "in the case of an alien who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a (removal) proceeding under section 240."[13] That is the standard that should be applied to all arriving aliens.

Finally, just as the credible fear standard may originally have had some utility, but has lost value as alien smugglers game the system and spread the stories that "work" in demonstrating credible fear, so the asylum statute itself, INA Section 208, while a useful addition to our immigration law when added in 1980, may have lost some value as the stories have been spread that "work" in convincing an adjudicator to grant asylum.

How did the U.S. meet its obligations under the Convention and Protocol on the Status of Refugees before 1980? The answer is through withholding of deportation, now withholding of removal, Section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. Section 1231(b)(3). That statute prevents the removal of an alien to any country if, "the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."

I would like to see Congress consider enhancing Section 241(b)(3) by adding to it some of the benefits of asylum, like adjustment of status to legal permanent resident, and following to join of spouses and minor children, under certain specified conditions, with the goal of replacing the asylum statute with a single enhanced withholding of removal statute for the protection of refugees. That statute has and will have a higher burden of proof than the asylum statute[14], and should therefore be less susceptible to fraud.

That concludes my testimony, and I again thank the committee for the opportunity to testify.

Mr. GOWDY. Thank you, Mr. Ting.

Mr. Acosta?

TESTIMONY OF HIPOLITO M. ACOSTA, FORMER DISTRICT DIRECTOR, U.S. CITIZENSHIP & IMMIGRATION SERVICES (HOUSTON) AND U.S. IMMIGRATION & NATURALIZATION SERVICE (MEXICO CITY)

Mr. ACOSTA. Thank you, Mr. Chairman and Members of the Committee, and thank you for allowing me to testify on the subject of asylum fraud before you today.

Several months ago, I spoke to a national of a Central American country in his early 30's who had been deported 3 years earlier after having resided in the United States for over 8 years. During the period he was here, he established a very successful business enterprise and immediately, upon arriving in his country, returned

[12] INA Section 235(b)(1), 8 U.S.C. Section 1225(b)(1).
[13] INA Section 235(b)(2)(A), 8 U.S.C. Section 1225(b)(2)(A).
[14] See I.N.S. v. Cardoza-Fonseca, 480 U.S. 421 (1987).

to the U.S. via Mexico using the services of a human smuggler to get back to his business.

Sometime after his illegal reentry, he sought the services of an immigration attorney to explore avenues to legalize his status. For a substantial fee, one of the options presented and recommended to him by the attorney was to file a credible fear claim. This legal advice was given despite the fact that he was already ineligible to file but the legal representative intended to use our own deportation record to show that he had been outside the country and would falsify the date of return. Even more egregious was the recommendation that cigarette burn marks could be placed on his body as evidence of torture in his country when he had been forced to return.

Fortunately, in this instance, the alien did not pursue the advice given. Instead, he sought other legal counsel and reported the incident to appropriate authorities.

While it is unknown what the outcome of the fraudulent claim finally would have been, this alien had an incentive to submit a fraudulent asylum claim to obtain legal status in the United States, especially when encouraged by immigration services providers who they consider experts and rely upon their advice for legal representation.

With USCIS statistics indicating that 92 percent of the credible fear claims were approved during fiscal year 2013, the odds were certainly in his favor of receiving a favorable ruling despite the fraud.

Ports of entry and some Border Patrol offices have reported surges of individuals presenting credible fear claims, including large numbers of Mexican citizens fleeing violence or threats from vicious narcotics trafficking cartels operating throughout that country. The violence occurring in Mexico and in some Central American countries is indisputable. The violence associated with the criminal organizations is real but under our legal standards does not qualify individuals for asylum. Yet, we have seen a staggering more than 500 percent increase during the 5-year period of claims along our southern border.

Our immigration history has shown that Mexican citizens and Central American aliens have long sought to enter our country in search of a better way of life and opportunities. This has included those who have entered our country illegally or individuals who overstayed their visas. With our enhanced border security and better technology, illegal entry along our southern border has become much more difficult, and the cost to pay smugglers has in some cases reached up to $5,000 to be smuggled to interior cities of the United States. Given the possibility of being released into our communities until our recent lenient detention policy, filing a claim has been a much more attractive option than entering the United States illegally.

Recent trends in the filing of asylum applications to abuse immigration laws have occurred in the past, and I believe it useful to learn from the previous abuse and mistakes over the years. One of the largest surges along our southern border occurred in the late 1990's when a catch and release policy for Central Americans who claimed they were fleeing violence and persecution in their native

countries was instituted. A memorandum detailing intelligence we had received indicating that smuggling organizations were planning to flood the border was not heeded. Within 2 weeks of my memorandum, hundreds of aliens were entering the border city of Brownsville, Texas, a large number of which would simply be guided across the river and turn themselves in at the U.S. Border Patrol office in that city. With an order to show cause and a hearing date not determined, they simply continued their journey to their final destination, in many cases to rejoin relatives already in the country. When hearings were finally scheduled, the notices were in many cases returned as undeliverable or, if received, they simply failed to show up.

Ironically, 4 years after I retired and more than 21 years after this surge, I was asked to provide testimony in a deportation hearing of one of those individuals we had arrested and released in 1988.

Smuggling organizations, whether from Latin American countries or elsewhere, are quick to adjust to perceive weaknesses in our enforcement actions. When I was serving as the District Director of our office at the U.S. embassy in Mexico City, a smuggling organization with ties in the United States established a pipeline using the airport in Mexico City as a transit point for Iraqi nationals destined for the United States. Successful in getting small numbers to the border city of Tijuana and ultimately into the U.S. where they were able to file for asylum, it was not long before the numbers swelled to over 200, all who claimed they were fleeing their country because of religious persecution.

It is important to note that some of those in this group had already been residing in different European countries but desired to rejoin relatives already in the United States.

Ultimately, all those that were smuggled through Mexico City were allowed to enter the United States. That I am aware, no follow-up was ever conducted to determine what measures were taken to identify all of those in that particular group.

Working with our counterparts in Mexico City resulted in the arrest of one of the participants at the Mexico City airport, and to my knowledge, this activity ceased.

How can we address this fraud? Through my long career, I can state that I personally participated in the processing and I can also attest to how serious and dedicated our adjudicating officers are in trying to protect the national security of our country and our communities. And at the same time, they must be fair in adjudicating an application for benefit, many times with very limited information. I applaud them for those efforts and strongly believe we should provide them with all the available tools necessary that have been identified through a system in this important function for our country.

Thank you, Mr. Chairman, for allowing me this opportunity to before you today.

[The prepared statement of Mr. Acosta follows:]

Prepared Statement of Hipolito M. Acosta, former District Director, U.S. Citizenship & Immigration Services (Houston) and U.S. Immigration & Naturalization Service (Mexico City)

Mr. Chairman and members of the Subcommittee, my name is Hipolito M. Acosta. In March 2005, I retired as the District Director of the U.S. Citizenship & Immigration Services (USCIS) Office in Houston, Texas after serving in various positions throughout the United States and two foreign countries during more than twenty-nine years of service. Prior to reporting to my last assignment, I served as the District Director of the U.S. Immigration & Naturalization Service office at the U.S. Embassy in Mexico City, a jurisdiction that covered Latin America and the Caribbean, including an INS office operating at the U.S. Interest Section in Havana, Cuba. Thank you for this opportunity to testify on our nation's asylum program.

Our nation has been a generous one in receiving immigrants from throughout the world who have sought protection from well-founded fears of persecution because of race, religion, nationality, membership in a particular social group or political opinion. In my long career in this field, I had the privilege of working on refugee and asylum matters as a front line officer as well as senior manager under the U.S. Immigration and Naturalization Service (INS). I bring to this hearing the unique perspective of having processed and adjudicated applications filed by Cubans during the Mariel Boatlift in 1980; Vietnamese applicants in Vietnam and the Philippines; served as the INS Officer in Charge of our processing team on the U.S. Naval Ship Comfort during the Haitian exodus in 1994 and finally, processed applicants at the INS office in Havana, Cuba in 1995. I will add that in addition to personally conducting credible fear interviews, as a senior officer of the agency I was tasked with reviewing all denial recommendations of other processing officers and signing off on the denials, a responsibility I took seriously as I knew very well the consequences applicants might face if we denied claims in error. I share with you my experience in the asylum field for a number of reasons, the most important being that lessons learned throughout those years are still valuable today as we see yet another surge in asylum applications, especially along our Southwest border.

CHALLENGES AND FRAUD IN ASYLUM PROCESSING

Adjudicating officers are tasked with an awesome responsibility that will have a lasting impact on the lives of those seeking asylum in our country. More importantly, they must take into account the security implications for our nation and communities when making those determinations. Oftentimes, those decisions are made with testimonial presentations and limited documentary evidence to assist them. Even when fraudulent documents are presented, that it itself is not sufficient to deny a credible fear claim.

There are many pros and cons to consider and discuss when addressing our asylum process and with limited time, I believe it important to address an area that poses not only a challenge when making these determinations but more importantly a factor that has often led to abuse of our generous policy—a lenient detention policy. In sum, my experience in this field and our history will show that a policy that includes the possibility of being paroled upon making a credible fear claim at our ports of entry or being granted relief while already inside the country is a huge magnet for aliens who would normally not qualify for other immigration benefits. This also provides a golden opportunity for individuals or organizations who want to profit from this activity, whether human smuggling or in assisting applicants with false claims. Please allow me to share with you my personal experiences that I believe will substantiate that position. This is a recent example of one such case.

A Honduran national was arrested and deported from the United States after residing in the country illegally for eight years. During that period, he established an extremely successful business enterprise and immediately upon arriving in his country, returned to the United States via Mexico using the services of a human smuggler to continue business operations. Two or three years after his illegal reentry, he sought the services of an immigration attorney to explore avenues available to legalize his status. For a huge fee and after having paid a large retainer, one of the options presented and recommended to him by the attorney was to file a credible fear claim. This despite the fact he had already been in country for more than one year. Since there was an actual deportation on file, the attorney offered that this record would be used to substantiate that he had departed the country and his illegal reentry date would be based on what period they wanted to submit. Even more egregious was the recommendation by the attorney that cigarette burn marks would be placed upon him to be used as evidence of torture when he had been returned to Honduras and would likely be subjected to more torture because of his social class. Fortunately and despite the hefty retainer paid, he decided he wanted no part of

this scheme, sought legal counsel elsewhere and reported the incident to authorities. While this is not the typical fraudulent type of claim, there are undoubtedly many more that would try to game the system.

Ports of entry along are Southern border and U.S. Border Patrol offices have reported large surges of individuals presenting credible fear claims, including large numbers by Mexican citizens fleeing violence or threats from vicious narcotics and criminal cartels operating throughout Mexico. It is undisputable that violence, extortion, kidnappings and other criminal activity has reached alarming levels in some Latin American countries but especially much more so in Mexico, where the great majority of organized criminal activity is controlled by the different Cartel groups. The criminal activity of the cartels is not limited to the aforementioned crimes, as smuggled aliens report that organizations involved in human smuggling are controlled by the cartels, oftentimes in collusion with law enforcement authorities.

With our enhanced border security and the cartel choke holds, the possibility of being allowed into the United States by making a credible fear claim and subsequently being released is an attractive magnet for citizens of Mexico and other Central American countries who would normally not qualify for non-immigrant visas. Why take a chance with an illegal border crossing when this option is available? This is also an attractive option for cartel members who fall out of favor within their own ranks, lose ground in some of the turf battles or simply want to continue their illicit activities in the United States but don't want to take the risk of apprehension by the U.S. Border Patrol while attempting illegal entry. The fact that many might have never been in the U.S. and would therefore not show up on any database check presents a huge problem for our officers when trying to make a determination on their claims. Our country has already experienced what the outcome can be when a lax detention policy is in place. These are important and expensive lessons that must not be allowed to repeat. I can share this through my personal involvement in one such surge in 1988.

SOUTH TEXAS—LATE EIGHTIES

Recent reports and statements have been made that aliens are arriving at "rates never seen before" claiming a "credible fear" of persecution while seeking to avoid being returned to their country of origin. These reports refer to the large surges of foreign nationals, largely from Central America and Mexico, claiming asylum at U.S. ports of entry and across our borders. These reports are not entirely correct as we have had larger numbers surge our borders using this same scheme as occurred in the later eighties. What's important here is not the numbers of then and now but the reason for these surges.

The answer is rather simple—the ability to make a claim, whether genuine or not, that results in release and being able to continue travel into the United States to rejoin family members and in most cases, never report for any immigration hearings scheduled has been the magnet for those seeking entry into the United States.

In late 1988, the Harlingen, Texas District Office, facing budgetary restraints and limited detention space, instituted a policy of releasing on recognizance aliens from Central America who claimed they were fleeing violence and persecution in their homeland. Served with an Order to Show Cause with a time and date of the hearing to be set at a future date, the apprehended aliens were allowed into the community with instructions that they could not leave the border area. Not only did they not remain in the South Texas areas, the great, great majority of those released continue their northward treks with the assistance of smuggling organizations operating on both sides of the border.

As the Supervisory Special Agent in Charge of the U.S. Border Patrol Anti-Smuggling Unit in Brownsville, Texas I had received very reliable information through our contacts in Mexico and Central America that human smuggling organizations were recruiting heavily and planning to flood the border. Armed with this information, I immediately expressed my concerns through a memorandum I submitted through channels to our then Regional Commissioner, asking that the practice and policy be rescinded. My request was not heeded or addressed. As records will indicate, my concerns became a reality and South Texas was flooded with thousands of Central American aliens, many of whom would simply walk across the river and guided to the local U.S. Border Patrol office to turn themselves in for processing and release. On numerous occasions, this number was over one thousand aliens encountered per day. References have been made that South Texas was flooded as a result of the 1986 Immigration Reform and Control Act and the amnesty provisions but that is far from true. What attracted these large numbers was the ability to evade detention and slip into the shadows in interior cities of the United States with the documents provided by our immigration authorities. Then and now, criminal organi-

zations availed of our policy to profit. Could criminals have been included in those surges and could that happen today? Our experiences have already shown that smugglers, criminals and those that would harm our country would gladly avail of whatever method or scheme they can use to enter the United States. The following is an example of how this opportunity was used during the surges of 1988 and 1989.

Knowing they would not be detained, smuggling was brazenly and completely done in the open. On one occasion, agents under my supervision and I witnessed two busloads of Central American aliens being off-loaded on the Mexican side of the river while being escorted by law enforcement officials. Ultimately, we detained approximately 110 aliens who had been transported through Mexico and directly to the river by human smugglers. We filed charges on 10 human smugglers, the owner of a local low-end hotel and seized a number of taxi-cabs being used by the smuggling operation.

Aliens and human smugglers from Latin American countries are not the only ones attracted by our generous detention policies when pursuing credible fear claims. In mid-2000, a small number of Iraqi nationals made their way through Mexico to the border city of Tijuana using the services of a Detroit based smuggling organization. Corrupt Mexican immigration officials at the airport in Mexico City facilitated their entry into the country. Once on the border, the small number of arrivals commenced making credible fear claims and soon word spread. Within a short period of time, over two hundred had arrived in Mexico. When four smugglers in the group were arrested by Mexican authorities, extensive media attention was given to the plight of the Iraqi nationals who all claimed had fled their homeland seeking refuge from persecution because of their Christian religion. Some of those encountered had actually been out of Iraq for several years. Also not known to the public was the fact that Mexican immigration authorities had arrested a large number trying to transit the Mexico City airport and had arrested at least one of their own immigration officers with information we had provided them. Our agency made a determination that we would not oppose the Mexican government releasing the large number of Iraqis they had held in custody with the understanding that those released would have to depart Mexico within a ten day period. Those released did in fact leave Mexico City—proceeding directly to Tijuana where they ultimately would apply for admission based on their claims of a well-founded fear of persecution.

Of particular note is the fact that many of these claimants had been in different countries prior to using Mexico as a jumping point. I would not dispute the fear of religious persecution by the Iraqi applicants but the risk to our country—this is pre-9/11—was that in some cases there was no way to verify the true identities or backgrounds of all those in this large group. Of equal importance is determining if any type of follow-up was ever done on those that were allowed into the country and granted status.

Reaching our borders or getting inside the country has generally proven to enhance the possibility of being allowed to remain when claiming credible fear, regardless of whether the persecution exists or not. Not being able to reach our shores however, is a different story. An excellent example is that of the Haitian nationals and Cubans.

Not unlike the Mexican situation of today, Haitians have long had issues with ensuring protection of its citizens. The random acts of violence are well known as are the disparity in social classes. In 1994, I served as the Officer-in-Charge of the INS processing team onboard the U.S. Naval Ship Comfort. The vessel was used as a processing facility for thousands of who had fled Haiti but were interdicted at sea by the U.S. Coast Guard. The approval rate for those processed was in the low twenty percent, yet no one could dispute the hardship and violence prevalent in Haiti but our officers were required to adjudicate with the statue regulating well-founded fears of persecution. Had the number of Haitians interdicted reached out shores or borders, it is unlikely that we would have been able to process and return them to the country as efficiently as we did. This factor coupled with the high denial rate resulted in a complete slowdown of the mass exodus.

DETECTING FRAUD OR CRIMINAL BACKGROUNDS WHEN DOCUMENTS ARE NOT AVAILABLE CUBAN MARIEL BOATLIFT PROGRAM

During the early part of 1980, close to 125,000 Cubans arrived on our shores in what became known as the Cuban Mariel Boatlift. When interviewed at the various processing sites established throughout the United States, all sought to establish they were fleeing their homeland because of persecution or a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion.

Assigned to our U.S. Immigration and Naturalization processing team in Ft. McCoy, Wisconsin, I had an opportunity to interview and process several hundred applicants and their families. I have no doubt that many did indeed suffer persecution as a result of their opposition to an oppressive regime or other factors that would qualify them as asylum applicants. It is also true however, that many simply wanted to join relatives already in the United States and in fact, the Cuban government used this opportunity to empty their prisons and place hardened criminals on the vessels departing Cuba. Smugglers in South Florida seized on the open invitation to enrich themselves by offering their services to relatives in the United Sates willing to pay to have their relatives smuggled.

During interviews of applicants and their families, INS interviewing officers could easily determine the applicants had been coached prior to their interview. Their stories were consistently the same and in fact, we determined that when applicants were notified that they had been approved and sent to the waiting area, through sign language known to many of those who had been imprisoned in Cuba, would communicate what presentations or claims were being accepted to those still waiting to be interviewed. Through sources we developed inside the housing area, a second INS officer and I were able to learn the sign language used and would often surprise applicants with what story they were going to present as they commenced their credible fear claim interviews. Once confronted with this information, they readily admitted to the coaching.

Of particular concern was the large number of applicants who had spent years in Cuban prisons but not for political activity or oppression as many claimed. They had been sent to prison for criminal activity that included theft, rape, robberies, murder, etc. These applicants too were coached on how to claim asylum. Fortunately, we developed sources who provided information on a great number of these criminals and through interviews, were able to establish that they were a danger to our communities were they to be released.

Laureano Buffuartue was one of these asylum applicants. Detained in Cuba at the age of twelve for theft, he did not see freedom again until placed on one of the vessels destined for the United States. With information provided by confidential sources, I interviewed Mr. Buffuartue who readily admitted to killing three men during his prison time. Had this information not been developed, there is likelihood that through appropriate coaching, Mr. Buffuartue would have made a fraudulent claim and if approved, would have ended in one of our communities. Like Mr. Buffuartue, there were hundreds of other asylum seekers who were detained but many more that number who ultimately were released.

The discovery of Mr. Buffuartue occurred in 1980 but I am sure this could happen today with the influx of asylum seekers at our Ports of Entry or those detained along our border who make a claim to credible fear. These could include criminals for which no background check, including FBI checks or those done through other data-bases would disclose their identity or true background. This type of information would only be revealed through the interview conducted by an officer with the skills, knowledge and time to pursue this matter or from information from foreign agencies.

The persecution claims presented by the Cubans in Mt. McCoy, Wisconsin were not limited to asylum applicants already in the United States. In 1996, I conducted refugee interviews at the U.S. Interest Section in Havana, Cuba and found that many of the same stories were presented to adjudicating officers. When additional documents were requested, applicants had no problems in obtaining those documents through the Cuban authorities. It was also not uncommon to discover that the documents obtained in many cases contained fraudulent information that would benefit an applicant in pursuing his credible fear claim. During one interview with a family unit that consisted of sixteen family members, I informed the principal applicant that he had not met the criteria to establish a well-founded fear of persecution based on his testimony and documentation. He and his immediate family however, qualified for parole into the United States based on an immigrant visa petition filed by relatives in the country already. He and the family members refused the offer of parole and chose to stay in Cuba because they would not qualify for benefits granted to refugee entrants and would have to pay for their transportation. Had they really feared persecution, there is no doubt they would have fled at this opportunity.

CONCLUSION AND RECOMMENDATIONS

The examples of fraudulent claims in the asylum process I mention in my presentation are just a few of many that have occurred throughout the years. Studies conducted have shown the vulnerabilities in the process and what is necessary in com-

bating this fraud. I urge that some of the measures I mention here are continued or expanded to assist USCIS in making the asylum determinations:

The close and continued cooperation between USCIS, ICE and DOJ is crucial in pursuing prosecution of immigration service providers involved in massive fraud and misrepresentation such as in the example earlier in this document of an attorney suggesting that a client consider having burn marks placed on his body as evidence of torture. Prosecution is crucial not only of the immigration service providers but the applicants themselves who conspired and assisted with the Service providers in submitting their fraudulent claims to obtain benefits. Action against the applicants should include detention and deportation as a result of filing fraudulent applications.

Extensive data-base checks must continue and as in previous case studies indicate, must be completed before a benefit is granted.

Overseas verification of documents is crucial when fraud indicators are present and can best be addressed through a timely response from overseas offices. These requests must be given high priority by the receiving office and if a response is not received within a mandated time period, call-up measures must be implemented.

Finally, extensive studies should be conducted on a yearly basis to analyze and identify fraud patterns and practices. This information is vital for adjudicators in making their determinations and in identifying vulnerabilities in the program.

Mr. GOWDY. Thank you, Mr. Acosta.

Ms. Acer?

TESTIMONY OF ELEANOR ACER, DIRECTOR, REFUGEE PROTECTION PROGRAM, HUMAN RIGHTS FIRST

Ms. ACER. Thank you very much. Chairman Gowdy, Ranking Member Lofgren, and Members of the Subcommittee, it is an honor to be here today to offer our views about U.S. asylum policy.

My name is Eleanor Acer and I direct the Refugee Protection Program at Human Rights First. Human Rights First is an independent advocacy organization that challenges America to live up to its ideals and assert its leadership on human rights. In our work, we develop partnerships with retired military leaders, former law enforcement officials, faith leaders, tech companies, and others to drive home the point that human rights are universal ideals and American values. With offices in New York, Washington, D.C., and soon in Houston, Texas, we oversee one of the largest pro bono refugee representation programs in the country, working in partnership with volunteer lawyers at some of the Nation's leading law firms.

Providing refuge for the persecuted is a core American value reflecting this country's deep commitment to liberty and human dignity, as well as its pledge under the post-World War II Refugee Conventions Protocol.

At Human Rights First, we see every day the ways in which people are protected through the U.S. asylum system. They are victims of religious persecution, women targeted for honor killings, trafficking, and horrific domestic violence, people targeted because of their ethnicity or sexual identity, and human rights advocates who stand up against oppression. You know these stories, Mr. Chairman, because as Americans we are defined by our global stance against injustice and a fair system for equal opportunity.

A strong asylum and immigration system that adjudicates cases in a fair and timely manner and includes effective tools for fighting abuse is essential to the integrity of the U.S. asylum process and to protect those fleeing persecution. When individuals or groups de-

fraud the system, it hurts everyone, and steps should be taken to counter those abuses and punish the perpetrators.

U.S. authorities have a range of tools to address these abuses. Many of the existing tools are outlined in my written testimony, including multiple identity and background checks, personnel in multiple agencies charged with detecting and investigating fraud, and the ability to refer for prosecution those who perpetrate fraud. That is particularly important because it sends a message that fraud will not be tolerated.

But you asked today if these safeguards are in place, what else can be done to strengthen the asylum system. And with the increase in credible fear claims on the border, are there additional steps that should be taken to safeguard the system? There are ways to handle these challenges that will reflect American values and strengthen the asylum system.

First, as I mentioned, the immigration agencies should utilize and increase as necessary anti-fraud tools and prosecutions should be continued and stepped up.

Another critical step also deserves attention. USCIS and EOIR should be properly staffed and resourced to adjudicate cases in a fair and timely manner and to eliminate backlogs that can be a magnet for abuse. Delays both increase the vulnerability of our immigration system to abuse and prevent refugees from having their cases adjudicated in a timely manner, often leaving refugee families stranded in difficult and dangerous situations abroad.

Asylum office and immigration court staffing should be increased to ensure timely and personal credible fear interviews, timely referrals of affirmative asylum claims that are not granted in the immigration courts, and the elimination of prolonged delays and substantial backlogs in the immigration courts.

As we seek to strengthen the system, we should also address the many ways in which refugees often find themselves lingering for months in jails and jail-like detention centers or denied or delayed in receiving protection. Unjust and unnecessary barriers that deny or delay protection to refugees, like the filing deadline bar to asylums, should be eliminated.

In addition, the recommendations of the bipartisan U.S. Commission on International Religious Freedom relating to expedited removal and detention should be implemented, including its recommendations on parole for eligible asylum seekers and the expansion of legal orientation presentations.

Congress should support the increased use of alternatives to detention as well, as detailed in my testimony.

While steps can and should be taken to strengthen the asylum system, it is absolutely essential that any changes in the law be very thoroughly thought out so that they do not further risk returning refugees to persecution or further prolonging detention in cases where it is unnecessary.

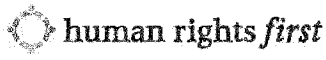
Thirty years ago, President Ronald Reagan signed into law the Refugee Act of 1980, which passed Congress with bipartisan support enshrining into domestic law America's historic commitment to protect the persecuted. Yesterday, as was noted earlier, 10 leading Republicans issued a statement in support of this country's commitment to protect the persecuted, stating that, quote, our poli-

cies toward refugees are at the heart of our American values. These individuals included former Secretary of Commerce Carlos Gutierrez, Governor Tom Ridge, Senator Mel Martinez, Dr. Paula Dobriansky, Governor Sam Brownback, Governor Jeb Bush, Grover Norquist, Jim Ziglar, Alberto Mora, and Suhail A. Khan. Mr. Chairman, we appreciate your entering that document into the record today.

America should not abandoned its compassion but should stand firm as a beacon of hope that will not turn its back on those seeking protection from persecution.

Thank you very much for the opportunity to share these views with you today.

[The prepared statement of Ms. Acer follows:]



TESTIMONY OF ELEANOR ACER

Director, Refugee Protection Program

HUMAN RIGHTS FIRST

On

"Asylum Fraud: Abusing America's Compassion?"

Submitted to the

House Judiciary Committee, Judiciary Subcommittee on Immigration and Border Security

February 11, 2014

Chairman Gowdy, Ranking Member Lofgren and members of the Subcommittee, it is an honor to be here today to offer our views about U.S. asylum policy. We appreciate your focusing attention today on these important issues.

My name is Eleanor Acer, and I direct the Refugee Protection Program at Human Rights First. Human Rights First is an independent advocacy organization that challenges America to live up to its ideals. We are a non-profit, nonpartisan international human rights organization based in New York and Washington D.C., and we are opening an office in Houston, Texas this year. To maintain our independence, we accept no government funding. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees who flee persecution. Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country, working in partnership with volunteer attorneys at many of the nation's leading law firms. Our clients include countless refugees who have stood up for human rights in their own countries, only to face persecution or torture, and who are able to build new lives and contribute to our communities because this country has granted them the protection of asylum. However, through our work we also see day in and day out the ways in which current U.S. immigration laws and policies are denying or delaying protection to refugees who seek this country's protection from political, religious and other persecution.

Overview

Protecting the persecuted is a core American value. Reflecting this country's deep-seated commitment to liberty and human dignity, as well as its pledge under the Refugee Convention's Protocol, the United States has long led efforts to protect those who flee from political, religious and other persecution. Over thirty three years ago, President Ronald Reagan signed into law the Refugee Act of 1980, which passed Congress with strong bi-partisan support, enshrining into domestic law America's historic commitment to protect the persecuted. In the intervening years, the U.S. asylum system has protected thousands of refugees from being returned to places where they would face political, religious or other persecution. We see these people day in and day out: they are victims of religious persecution; women targeted for honor killings, trafficking and horrific domestic violence; gay men attacked in countries where they face constant threats; human rights advocates who stand up against oppression in Syria or against the perpetrators of brutal violence in Central America; and ordinary people who are persecuted for who they are or what they believe.

A strong asylum and immigration system that adjudicates cases in a fair and timely manner and includes effective tools for fighting abuse, is essential both for ensuring the integrity of the U.S. immigration process as well as for protecting refugees from return to places of persecution. If individuals or groups are defrauding the asylum system, it hurts everyone, and steps should be taken to counter those abuses and punish the perpetrators. U.S. authorities have a range of effective tools to address abuses. As noted in this testimony, U.S. agencies conduct multiple identity and background checks, have personnel in multiple agencies charged with detecting and investigating fraud, and have the ability to refer for prosecution individuals who perpetrate and orchestrate fraud. Many of these tools have been enhanced over the years, and the prosecution of

criminal charges – like the high profile charges filed in 2012 against 26 individuals associated with law firms in New York City's Chinatown - are critical for sending a message that efforts to defraud the immigration systems will not be tolerated.

However, in order to effectively secure the integrity of the system, the agencies responsible for asylum adjudication – USCIS and EOIR – must be properly staffed and resourced to adjudicate cases in a fair and timely manner, and to eliminate backlogs that can be a magnet for abuse. In the immigration courts, over 350,000 immigration removal cases have now been pending for an average of 570 days. While immigration enforcement and related funding have increased significantly in recent years, funding for the immigration courts has lagged well behind. These delays both increase the vulnerability of our immigration system to abuse and prevent refugees from having their cases adjudicated in a timely manner, often leaving refugee families stranded in difficult and dangerous situations abroad. Adequate staffing and resources are essential for maintaining the integrity and effectiveness of the system.

As we seek to strengthen the system, we should also address the many ways in which our current asylum system fails to provide protection in a manner consistent with this country's commitments and legal obligations to protect refugees fleeing persecution. Over the years, so many barriers and hurdles have been added to the asylum system through multiple rounds of legislation that refugees who seek the protection of the United States often find themselves denied asylum, delayed in receiving protection, or lingering for months in jails and jail-like immigration detention facilities. In addition to supporting a fair and timely decision-making process for those seeking this country's protection, Congress should eliminate unjust barriers that deny or delay U.S. protection to refugees and implement the recommendations of the U.S. Commission on International Religious Freedom relating to expedited removal and detention.

This country must preserve the integrity of its asylum system. U.S. immigration authorities have the legal and policy mechanisms necessary to detect and address abuse, including to refer for prosecution individuals who attempt to orchestrate fraud on the system. But additional staffing and resources are needed for the asylum, credible fear and immigration court removal systems. Changes in law that would further prolong detention for many asylum seekers or risk turning refugees back to persecution are not necessary, and are inconsistent with this country's commitments and values. America should not abandon its compassion, but should stand firm as a beacon of hope that will not turn its back on those seeking protection from persecution.

Recommendations

Key steps that the Administration and Congress should take to protect the integrity and effectiveness of the asylum system include:

- **Increase Asylum Office Staffing to Address Backlogs, Provide Timely Referrals into Removal Proceedings, and Conduct Timely In-Person Credible Fear Interviews.** As asylum officers have been redeployed to conduct credible fear interviews, delays and backlogs for affirmative asylum interviews have grown. A timely and effective asylum office

interview process is essential for maintaining the integrity of the U.S. asylum system and will ensure that those who are not eligible for asylum are promptly referred into immigration court removal proceedings. Delays also undermine the ability of refugees to rebuild their lives and bring stranded spouses and children to safety in this country. The USCIS asylum office should also have sufficient resources to conduct prompt and effective credible fear and reasonable fear interviews, and to conduct these interviews in person.

- **Increase Immigration Court Staffing to Address Removal Hearing Delays and Eliminate Hearing Backlog.** Both the American Bar Association and the Administrative Conference of the United States (ACUS) have expressed concern that the immigration courts do not have the resources necessary to deal with their caseloads. The delays and backlogs resulting from insufficient staffing and resources undermine the integrity of the system by exposing it to potential abuse and by leaving individuals who are desperately awaiting their asylum hearings in limbo for years.

- **Utilize Multiple Existing Anti-Fraud Tools.** ICE and USCIS should continue and increase where needed their use of the many available tools for combatting fraud and abuse in the immigration and asylum systems. As detailed below, these include training, enhanced background biographical and biometric checks, fraud detection and investigation capacities, and referral of cases for criminal prosecution. If additional resources are needed, the Administration should request and Congress should appropriate funding to ensure that DHS and DOJ have the resources required to adequately combat fraud.

- **Prosecutors should prioritize prosecutions of individuals who orchestrate schemes that defraud the immigration and asylum systems**. Prosecuting the perpetrators of fraudulent schemes will reduce fraud and abuse and enhance the integrity of the asylum and immigration systems, as well as protect the immigrants who are often victims of these schemes. The American Bar Association, the New York Immigrant Representation Study Group, and others have recommended strict penalties for those who engage in unauthorized practice of law. Referrals from immigration authorities have resulted in numerous prosecutions of perpetrators of fraud. Charges were brought in major cases in California, Texas, Florida, Maryland and elsewhere over the last four years, in addition to the highly publicized criminal charges filed against the 26 individuals who worked at law firms in New York City's Chinatown.

- **Implement U.S. Commission on International Religious Freedom (USCIRF) Recommendations on those fleeing religious and other forms of persecution and Request Updated USCIRF Study.** Department of Homeland Security and Immigration and Customs Enforcement should implement U.S. Commission on International Religious Freedom recommendations, including: using detention facilities that do not have jail-like conditions when asylum seekers are detained; maintaining, effectively implementing and codifying the existing parole guidance into regulations; and expanding legal orientation presentations. Congress should request and support an updated USCIRF study on the conduct of expanded removal and its impact on asylum seekers.

- **Effectively Implement Asylum Parole Guidance.** Immigration and Customs Enforcement should effectively implement the existing asylum parole guidance, ensuring that eligible arriving asylum seekers are assessed for parole under the specified criteria, and released when they meet those criteria; and – in accordance with that guidance – not releasing any individual who presents a danger to the community or flight risk. Human Rights First has assisted many individuals who fled persecution and arbitrary detention for their pro-democracy or human rights advocacy only to languish in jail-like facilities in the United States while awaiting adjudication of their asylum requests. The traumatizing effects of detention on a torture survivor are immense and have been well documented.

- **Use Cost-Effective Alternatives to Detention.** Where individual asylum seekers are in need of supervision and/or case management to assure their appearance, Immigration and Customs Enforcement should utilize cost-effective alternatives to detention. Alternatives have been demonstrated to produce high appearance rates – with ICE's current contracted supervision program reporting a 97.4 percent appearance rate at final hearings and an 85 percent compliance rate with final orders where case management is utilized. Groups from across the political spectrum, including the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy, the International Association of Chiefs of Police, and the Texas Public Policy Foundation (home to Right on Crime), have recommended alternatives for their cost-savings. Many states are increasingly turning to the use of alternatives in the criminal justice system, prompted by Right on Crime and other reform experts. Congress should support flexibility in funding so that Immigration and Customs Enforcement can utilize these alternatives to save costs in cases where detention is not necessary to meet the government's need for appearance, where additional supervision would assure appearance, and the individual poses no danger.

- **Support Legal Orientation Programs and Access to Counsel Measures that Improve Fairness and Efficiency of the Immigration System.** Legal Orientation Programs (LOP), which have been praised for their cost-effectiveness and for increasing immigration court efficiency, currently provide legal information and, in some cases, referrals to counsel, at some (25 out of approximately 250) facilities used for immigration detention. Approximately 80 percent of detained individuals do not have representation in their immigration proceedings. LOPs – and quality legal counsel - can help non-represented individuals understand their eligibility, and in some cases lack of eligibility, for asylum and other potential forms of immigration relief. Congress should sufficiently fund DOJ to ensure that LOPs are funded and in place at *all* facilities used for immigration detention. According to a 2012 DOJ report, LOP reduced the amount of time to complete immigration proceedings by an average of 12 days. Factoring in the savings – primarily to DHS through reduced length of time spent in detention – LOP has been shown to have a net savings of approximately $18 million.

- **Remove Unnecessary Impediments that Delay Cases and Block Refugees from this Country's Protection**. This includes elimination of the asylum filing deadline which bars legitimate refugees from asylum, and needlessly adds to the number of cases in the

immigration courts. As Dr. Richard Land has described, "When people escape horror and come to the United States in desperate need of freedom and safety, we shouldn't turn them away because of a bureaucratic technicality."[1] The USCIS Asylum Division should also have increased jurisdiction over asylum and withholding claims, as recommended in the 2012 Administrative Conference of the United States report. By resolving more cases at the asylum office level, the process would be more efficient, decreasing the caseload at the immigration courts.

- **Identify and Address Impunity, Rule of Law Deficits and other Drivers of Flight.** The United States should, through diplomacy and foreign assistance, work with states and the international community to address the impunity, corruption, and rule of law challenges that are contributing to significant increases in the number of individuals fleeing violence and persecution in Central America and Mexico. All steps taken should be consistent with refugee protection and other human rights obligations.

The Importance of the U.S. Asylum System

In the wake of World War II, the United States played a leading role in building an international refugee protection regime to ensure the world's nations would never again refuse to extend shelter to refugees fleeing persecution and harm. The United States has committed to the central guarantees of the 1951 Refugee Convention and its 1967 Protocol. With strong bipartisan support, the U.S. Congress passed the Refugee Act of 1980, creating the legal status of asylum and a formal framework for resettling refugees from around the world.

In the intervening years, the United States has granted asylum and provided resettlement to thousands of refugees who have fled political, religious, ethnic, racial and other persecution. These refugees have come from Burma, China, Colombia, Guatemala, Iran, Iraq, Liberia, Rwanda, Russia, Sierra Leone, Sudan and other places where people have been persecuted for who they are or what they believe. Many were arrested, jailed, beaten, tortured or otherwise persecuted due to their political or religious beliefs, or their race, ethnicity, sexual orientation or other fundamental aspect of their identity. Over the years, these refugees and their families have been able to rebuild their lives in safety in the United States.

As the Council on Foreign Relations Independent Task Force on Immigration Policy, co-chaired by former Florida Gov. Jeb Bush and former Clinton White House chief of staff Thomas "Mack" McLarty, pointed out: "The treatment of refugees and asylum seekers is [a] dimension of immigration policy that reflects important American values." That task force's report also stressed the example that the United States sets for the world: the U.S. commitment to protect refugees from persecution is "enshrined in international treaties and domestic U.S. laws that set

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[1] Dr. Richard Land and Elisa Massimino, *Land and Massimino: Immigration: A Closer Look*, Richmond Times Dispatch, April 29, 2013.

the standard for the rest of the world; when American standards erode, refugee face greater risks everywhere."

The Many Hurdles Refugees Already Face in Seeking America's Protection

In recent years, so many hurdles and barriers have been added to the asylum system, through round after round of legislation, that many refugees often find their claims for U.S. protection denied or delayed. These impediments and hurdles include: expedited removal, "mandatory detention," the asylum filing deadline, and the overly broad terrorism-related inadmissibility provisions of immigration law that are leading to denials and delays for thousands of genuine refugees who present no threat to this country. The United States has also dramatically increased its use of immigration detention, and asylum seekers can be left for months or longer in jails and jail-like detention facilities, often without access to counsel or legal information. Human Rights First has documented many of these problems in a series of reports.[2]

Some examples of the many refugees impacted by these hurdles include:

- A Russian man – who fled his country after suffering repeated attacks and beatings because of his sexual orientation – was detained in as U.S. immigration jail for five months, held in solitary confinement for much of that time, and only released recently after being granted asylum;
- A Tibetan man, who for more than a year was detained and tortured by Chinese authorities after putting up posters in support of Tibetan independence, was detained again for nearly a year in a U.S. immigration detention facility;
- A Colombian man who fled persecution in his home country was turned away from a U.S. airport under expedited removal even though he expressed a fear of return. His persecution continued, prompting him to attempt the dangerous journey to flee again. He was eventually granted asylum in the United States after his mistaken expedited removal was corrected; and
- A young woman from Eritrea who was tortured for her Christian beliefs had her request for asylum in the United States denied due to the asylum filing deadline even though a U.S. immigration judge concluded that she faced a clear probability or persecution.

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[2] *See* Human Rights First, *Is This America? The Denial of Due Process to Asylum Seekers in the United States* (New York: Human Rights First, 2000) available at http://www.humanrightsfirst.org/our-work/refugee-protection/due-process-is-this-america/; Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison* (New York: Human Rights First, 2009), available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf; Human Rights First, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*, (New York: September 2010) available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf; Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, (New York: Human Rights First, 2011) available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf.

Mechanisms in the System for Addressing Fraud

The U.S. asylum system and U.S. law contain many measures that are specifically aimed at, and closely tailored to, identifying fraud and protecting the integrity of the system. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) contained strict security provisions, including a requirement that identity checks be conducted against federal government databases and records for all individuals applying for asylum. Section 208 (d)(5)(a)(i) of the INA requires that "asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State … to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum." These checks can help identify fraudulent cases as well as any individual who might present a security risk. Anti-fraud and security check measures continue to be strengthened, as well new ones initiated, and many additional steps have been added since both 1996 as well as in the years since the study on fraud, based on a sample of cases from 2005, reported on in the *Washington Times* on February 6, 2014. Outlined below are just some of the mechanisms that are designed to protect the immigration and asylum systems from abuse.

In December 2013 written testimony, DHS stated that: "Before individuals are granted asylum, they must all establish identity and pass all requisite national security and law enforcement background security checks. Each asylum applicant is subject to extensive biometric and biographic security checks. Both law enforcement and intelligence community checks are required – including checks against the FBI, the Department of Defense, the Department of State, and other agency systems." Some of the key measures that the USCIS Asylum Division uses to prevent abuse of the asylum system include:[3]

Mandatory Biographical Checks (Checks Using the Applicant's Name, Date of Birth, and Aliases): These include checks in USCIS Central Index System; CBP TECS; ICE ENFORCE Alien Removal Module; FBI Name Checks; and DOS Consular Consolidated Database. Mandatory biographical checks are conducted in multiple databases, using the applicant's name, date of birth, and aliases.

- **USCIS Central Index System**: In conducting background screenings, asylum applicants are first checked against the USCIS Central Index System to determine if they have previously been issued an alien number.

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[3]See Department of Homeland Security (DHS), Combined Testimony of DHS before the House Judiciary Homeland Security Committee for a hearing on "Asylum Abuse: Is it Overwhelming Our Borders" (December 12,2013) available at http://judiciary.house.gov/_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf; fact sheet from U.S. Citizenship and Immigration Services (USCIS) on file with Human Rights First; USCIS, Affirmative Asylum Procedures Manual (November 2013) *available at* http://www.uscis.gov/sites/default/files/files/nativedocuments/Asylum_Procedures_Manual_2013.pdf.

- **TECS**: They are also screened against TECS, CBP's primary law enforcement and national security database, which contains enforcement, inspection, and intelligence records. TECS contains various types of information from a variety of Federal, state, local, and foreign sources, and the database contains records pertaining to known or suspected terrorists, wanted persons, and persons of interest for law enforcement and counterterrorism purposes.
- **EARM – ENFORCE Alien Removal Module**: This ICE database contains records of aliens in detention, exclusion, and removal processes.
- **FBI name check**: The FBI searches for the applicant's name(s) and date(s) of birth in their records.
- **CCD – Consular Consolidated Database**: Asylum office personnel access the Department of State's web-based CCD to obtain information about the identity, previous travel history, method of entry into the U.S. and/or background of an asylum applicant.

Mandatory Biometric Checks (Checks Using the Applicant's Fingerprints and Photograph): These checks include FBI fingerprint check, US-VISIT/IDENT, and DOD/ABIS vetting for certain applicants.

- **FBI Fingerprint Checks**: With respect to affirmative asylum applications, as described in DHS's testimony from December 2013: "A USCIS Application Support Center takes a complete set of fingerprints and biometrics (signature, photograph and index print) of asylum applicants between the ages of 12 years 9 months and 79 years. The FBI electronically searches the fingerprints within the Integrated Automated Fingerprint Identification System." Asylum officers and immigration judges are not authorized to grant asylum until the applicant's fingerprints have been run through the FBI database and the results are received and reviewed.
- **US-VISIT/IDENT**: US-VISIT/IDENT is a DHS system managed by the National Protection and Programs Directorate's (NPPD) Office of Biometric Identity Management (OBIM), and includes biometric information related to the travel history of foreign nationals and Watchlist information. It also contains visa application information owned by the Department of State. This system is used to confirm identity, determine previous interactions with government officials and detect imposters. The 10 fingerprints – referenced above in connection with the FBI fingerprint check - are also electronically submitted to the US-VISIT/IDENT database, where they are stored and matched to existing fingerprint records. This system is used to confirm identity and determine previous interactions with government officials. Through the US-VISIT SIT tool, asylum officers have the ability to verify that the person who went to the Application Support Center (ASC) for fingerprinting is the same person appearing at the asylum office for interview.
- **DOD Automated Biometric Identification System**: A biometric check against the Department of Defense (DOD) Automated Biometric Identification System (ABIS) is conducted for certain cases.

- **National Counterterrorism Center**: The Asylum Division also screens the biographic information of new asylum applicants against the National Counterterrorism Center's terrorism holdings.

For protection requests that enter the system through the credible fear process, the DHS testimony explains that USCIS Asylum Officers conduct a mandatory check of both TECS (described above) and US-VISIT/IDENT (referenced above) during the credible fear process. These checks help to confirm identity and inform lines of questioning. In addition, with respect to cases that enter the system through the credible fear process, asylum officers – at the credible fear stage - also ensure that the Federal Bureau of Investigation (FBI) name check and fingerprint checks have been initiated. DHS, in its December testimony, stated that "The USCIS asylum officer's determination as well as information on the individual's identity, including how he or she established it, results of the security checks, and any adverse information is recorded and placed in the alien's file upon completion of the credible fear process. This information is then provided to ICE." As a result, ICE will have this information with respect to individuals who pass the credible fear screening process and are put into immigration court removal proceedings and to consider in detention determinations.

Fraud Detection and National Security Teams

USCIS's Office of Fraud Detection and National Security aids in identifying fraudulent asylum claims by training asylum officers and providing technical support. Through this office, asylum officers may refer suspected fraudulent applications to ICE for criminal investigation and prosecution. These specially trained officers review asylum files to monitor the asylum caseload for fraud and they liaise with various law enforcement entities. These officers also help train asylum officers on detecting and addressing fraud. The FDNS officers also conduct in-depth vetting on cases with national security concerns. This includes liaising with local Joint Terrorism Task Forces regarding these cases. Asylum Offices also have on their staff trained document experts, Forensic Document Laboratory Certified Document Instructors (FDLCDIs), who have been trained by the Department of Homeland Security's Forensic Document Laboratory. FDLCDIs examine for fraud documents submitted to the Asylum Office by asylum applicants and train Asylum Office staff on how to recognize certain documents for irregularities and fraud indicators.

Asylum Officer Training and Mandatory Supervisory Review of all Asylum Decisions

Affirmative asylum interviews and credible fear interviews are conducted by specially trained USCIS asylum officers who are trained and dedicated full-time to the adjudication or screening of protection claims. They are, as DHS has explained in recent testimony, extensively trained in national security issues, the security and law enforcement background check process, eligibility criteria, country conditions, interview techniques, making proper credibility determinations, and fraud detection. During an asylum interview, "The asylum officer fully explores the applicant's persecution claim, considers country of origin information and other relevant evidence, assesses the applicant's credibility and completes required security and background checks. The asylum officer then determines whether the individual is eligible for asylum and drafts a decision."

Supervisors review 100 percent of asylum officers' determinations prior to issuance of a final decision, and they also review 100 percent of credible fear determinations.

Government-Funded Interpreter Monitors

Current regulations require that asylum applicants provide interpreters at their own expense when they cannot proceed effectively in English at the asylum interview. The Asylum Division uses neutral, government-funded interpreters to monitor the interpretation of asylum interviews at all Asylum Offices, in order to ensure that interpreters brought by applicants are correctly interpreting interview questions and answers. Procedures for securing an interpreter monitor apply in all affirmative asylum cases where the applicant does not speak English.

When cases are referred from the USCIS Asylum office into the immigration courts, the information used by the asylum office to make a determination on the individual's claim, including the interview notes, biographic information, completed security checks and decisional documents, is placed into the individual's file and is available for use by ICE attorneys during immigration court removal proceedings.

Applicants Who Knowingly Make a Frivolous Application Permanently Barred

INA 208(d)(6) provides that "If the Attorney General determines that an alien has knowingly made a frivolous application for asylum, the alien shall be permanently ineligible for any benefits under the Act."

Asylum Applicatious Signed Under Penalty of Perjury

When the legacy Immigration and Naturalization Service (INS) overhauled the asylum system in 1995, it revised the asylum application form to require both the asylum applicant and the individual preparing the application to sign the application "under penalty of perjury" that the application and the evidence submitted with it are true and correct. In addition, the asylum applicant is put under oath at the Asylum Office interview, and must execute a record of that oath. The interpreter must also be placed under oath and execute a record of oath as well.

Fraudulent Filers, Preparers, and Attorneys Can Be Prosecuted

Individuals who seek to defraud the immigration and asylum system can be and have been prosecuted. Unscrupulous "notarios" and attorneys take advantage of immigrants by untruthfully telling them they are eligible for certain benefits and then preparing fraudulent applications – including asylum applications – for large fees. To facilitate prosecution of fraudulent filers, USCIS is a member of the Immigration and Customs Enforcement's (ICE) Document and Benefit Fraud Task Force, which coordinates with U.S. Attorney's Offices to identify and prosecute fraudulent immigration benefit claims. Charges have been brought against such preparers in many states, including California, New York, Texas, Florida, and Arizona. On June 9, 2011 the Federal Trade Commission with the Departments of Justice and Homeland Security announced a multi-agency, nationwide initiative to combat immigration services scams.

Identification and Response to Fraud and Abuse in the Immigration Court System

As noted above, asylum applicants can only be granted asylum if the identity of the applicant has been checked against all appropriate records or databases. EOIR also has a Fraud Program designed to assist court judges and staff with identifying fraudulent cases and systemic evidence of schemes to defraud the system. In addition, ICE trial attorneys are charged with identifying potential fraud. In cases before the immigration court, where ICE trial attorneys may present evidence if the government suspects fraud, Immigration Judges have the authority to find a case fraudulent or frivolous, a finding that comes with severe consequences for the applicant.

In addition, as described by EOIR Director Juan Osuna in November 2013 testimony before the House Committee on Oversight & Government Reform Subcommittee on National Security: "EOIR has a robust and active program for identifying and referring claims of fraud encountered by immigration judges and the BIA. ....The complaints and requests for assistance the Fraud and Abuse Program receives each year are almost evenly divided between unauthorized practice of immigration law (UPIL) complaints and fraudulent claims perpetrated against the government." That testimony also stated that: "Because EOIR has no authority to conduct investigations or prosecute, UPIL complaints are referred to federal, state and local law enforcement, and bar associations for investigation and prosecution. EOIR also files complaints of UPIL fraud with the Federal Trade Commission's Consumer Sentinel Network (Sentinel) and collaborates with USCIS's Fraud Detection and National Security Directorate and other government agencies in combating fraudulent immigration activity. EOIR consistently is among the top-ranked government agencies in referring UPIL fraud to Sentinel." EOIR also regulates the professional conduct of immigration attorneys and representatives, EOIR's Disciplinary Counsel investigates complaints involving alleged misconduct associated and can initiate formal disciplinary proceedings. Since the program's inception in 2000, EOIR reports that it has disciplined more than 1,100 attorneys.

Wrongdoers and Security Threats Excluded from Protection

In addition, the Refugee Convention's "exclusion clauses" require host countries to exclude from the Convention's protections any person who has committed heinous acts or grave crimes that make him undeserving of international protection as a refugee, even if that individual has a well-founded fear of persecution. A separate provision of the Convention allows the return of a refugee who poses a danger to the security of the host country. The United States incorporated into its law the Refugee Convention's promise to provide protection to refugees, but also codified bars to asylum and withholding of removal intended to reflect the Convention's exceptions.

U.S. immigration laws prohibit granting asylum and any form of refugee protection to: people who engaged in or assisted in or incited the persecution of others; people who have been convicted of a particularly serious crime in the United States; people who have committed a serious non-political crime abroad; people who have engaged in terrorist activity; people who are

representatives of foreign terrorist organizations; or people who otherwise pose a threat to the security of the United States.[4]

The recent exemptions to immigration law inadmissibility provisions issued by the Department of Homeland Security in February 2014 – pursuant to authority provided by Congress – specifically exclude a long list of individuals including anyone who poses a danger to the safety and security of the United States or has not passed all relevant security and background checks. These exemptions do not apply to situations involving groups that are actually listed or designated as "terrorist organizations" by the United States government. These inadmissibility provisions have ensnared refugees with no real connection to terrorism, such as a refugee from Burundi who had a rebel group rob him of four dollars and his lunch and an Iraqi former interpreter for the U.S. Marine Corps was informed that his past connection to a Kurdish group allied with the United States and opposed to Saddam Hussein made him inadmissible. These exemptions do not address the situation of individuals who had innocent interactions with designated or listed groups – like for instance, an Iraqi widow who had a member of a designated terrorist organization buy flowers in her flower shop (incidentally while the group was under U.S. military protection).[5]

The Importance of a Timely and Effective Process in Deterring Abuse

The integrity of any system is protected by its ability to operate fairly and in a timely manner. In the 1990s, the asylum system was under-resourced and under-staffed. Faced with a large number of asylum filings prompted by a wave of brutal civil wars and human rights abuses in Central America, the asylum system developed a substantial backlog. This multi-year backlog and lack of adequate staffing left the U.S. asylum system vulnerable to abuse. Some individuals sought to exploit the system. Some people were told by unscrupulous lawyers or others that they could sign a form and would then be allowed to remain in the United States for years with work authorization. This backlog had a devastating impact on the cases of many bona fide asylum seekers. Their lives were in limbo for years, and the delays in their asylum grants left many separated from their children and spouses for years.

The U.S. Immigration and Naturalization Service (INS) launched a major reform effort and took a number of steps to address these challenges. These steps included quicker adjudications, quicker referrals to deportation proceedings for those not granted asylum after an asylum interview, and increased staffing to ensure timely adjudication. The INS also terminated the automatic grant of work authorization to asylum applicants at the time they apply – a step that

[4] INA § 208(b)(2) (8 U.S.C. § 1158(b)(2)) (bars to asylum); INA § 241(b)(3)(B) (8 U.S.C. § 1231(b)(3)(B)) (bars to withholding of removal).
[5] For more background, *see* Human Rights First, *Refuge at Risk: The Syria Crisis and U.S. Leadership*, November 2013; Human Rights First, *Denial and Delay: The Impact of the U.S. Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States*, 2009.

has left many legitimate asylum seekers without the means to support themselves while they await adjudication of their asylum requests.[6]

As a result of the asylum processing improvements that were put in place at the time, and continued for many years after, individuals who applied for asylum would generally have their asylum interviews within a month or two of filing. Individuals who applied for asylum saw their cases promptly put into removal proceedings if they were not found eligible for asylum by the asylum office. However, in recent years, due to inadequate funding and increased demand, backlogs and delays have been allowed to grow in both the asylum and immigration court systems.

At USCIS, the asylum division has redeployed its asylum officers to address the escalating number of credible fear interviews at the border. Backlogs in the asylum office have risen over the last two years and some asylum seekers are now waiting many months and sometimes longer for their interviews. While prompt conduct of credible fear interviews should be a top priority, USCIS needs the resources and staffing to conduct prompt in-person credible fear interviews as well as to conduct affirmative asylum interviews in a timely manner. Adequate staffing and resources are essential for maintaining the integrity of the asylum system.

The immigration court system, which is within the Department of Justice's Executive Office for Immigration Review (EOIR), has for a number of years been widely acknowledged to be overstretched, backlogged, and underfunded.[7] In recent years, resources for immigration enforcement have escalated or remained high, leading many more cases to be place into immigration court removal proceedings. At the same time, the resources for the immigration court system have lagged behind leaving the immigration courts under-staffed. Over 350,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 570 days.[8]

The Administrative Conference of the United States (ACUS), based on its study of the immigration court system, concluded in June 2012 that the immigration court backlog and "the limited resources to deal with the caseload" present significant challenges. In 2010, the American Bar Association's Commission on Immigration, in its comprehensive report on the

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[6] Human Rights Watch and the Seton Hall University School of Law's Center for Social Justice "At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States," November 2013.

[7] American Bar Association, *Reforming the Immigration Detention System* (2010), pp. 2-16 available at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf; Administrative Conference of the United States (ACUS), "Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012," available at http://www.acus.gov/wp-content/uploads/downloads/2012/05/Proposed-Immigration-Rem.-Adj.-Recommendation-for-Plenary-5-22-12.pdf

[8] Immigration Court Backlog Tool. Backlog as of December 2013. *Transactional Records Clearing House* available at http://trac.syr.edu/phptools/immigration/court_backlog/.

immigration courts, concluded that "the EOIR is underfunded and this resource deficiency has resulted in too few judges and insufficient support staff to competently handle the caseload of the immigration courts."

The delays and burden on the immigration courts can be exacerbated when cases that could or should be granted at the asylum office level are put into the immigration court system. As documented by a comprehensive statistical study on the asylum filing deadline, thousands of asylum cases have been placed into the immigration court system unnecessarily due to the asylum filing deadline.[9] Other categories of asylum cases could also be more efficiently resolved if they were referred initially to the USCIS asylum office.[10] The lack of legal counsel for asylum seekers and other immigrants, in part exacerbated through detention practices that inhibit access to counsel, also impacts the efficiency and fairness of the immigration court system. EOIR itself has explained that: "Non-represented cases are more difficult to conduct. They require far more effort on the part of the judge."[11]

Court backlogs and extended asylum processing times also have a grave impact on asylum seekers themselves. While they wait – sometimes two to three years - to have their claims heard, many remain separated from spouses and children who may be in significant danger in their home countries. Without access to work authorization for months or longer while awaiting their immigration court hearings, many asylum seekers are unable to support themselves and their families. Some become homeless or destitute. As the pro bono leaders at some of the nation's leading law firms wrote in June 2013, the backlog in the immigration courts is resulting in years-long delays and making it increasingly difficult to recruit pro bono counsel.[12]

Drivers of Flight and Asylum Filings

Asylum filings globally often rise and fall in response to conditions in the countries people are fleeing from. Wars, escalations in persecution and violence, and other threats to safety and security lead people to flee in search of protection. Globally for example, the number of refugees fell for a number of years, only to rise again as persecution, violence and war in Syria, Afghanistan, Iraq and other countries has risen.

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[9] Philip G. Schrag, Andrew I. Schoenholtz, Jaya Ramji-Nogales, and James P. Dombach. "Rejecting Refugees: Homeland Security's Administration of the One-year Filing Deadline." *William and Mary Law Review*. 52, No. 3 (2010); Human Rights First. *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Government Efficiency* (November 2010).

[10] Administrative Conference of the United States (ACUS), "Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012," available at http://www.acus.gov/wp-content/uploads/downloads/2012/05/Proposed-Immigration-Rem.-Adj.-Recommendation-for-Plenary-5-22-12.pdf

[11] Charles H. Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices* (Dec. 2004), available at http://www.uscirf.gov/images/stories/pdf/asylum_seekers/legalAssist.pdf.

[12] Association of Pro Bono Counsel, June 4. 2013, available at http://www.endthedeadline.org/uploads/pdfs/APBCo-Letter.pdf.

From a global perspective, the vast majority of refugees are hosted by states neighboring or close to their home countries. For example, the vast majority of the 2.3 million Syrian refugees displaced as a result of the crisis there have been received by neighboring countries such as Lebanon, Jordan, and Turkey, placing a tremendous burden on these host countries.[13] While the United States is a global leader in protecting refugees and a nation of immigrants, it hosts only a small portion of the world's refugees.

Current U.S. asylum filings, as detailed by the Congressional Research Service (CRS) in December 2013 testimony before the House Judiciary Committee, have dropped since the 1990s. CRS noted that there was an uptick in in asylum requests in the early 2000s, and while there has been a slight increase since 2010, the numbers have not reached the levels of the early 2000s.[14]

As detailed in the CRS testimony, there has been a surge in protection requests made during the expedited removal process. In Fiscal Year 2013, the number reached 36,026, more than doubling from 13,931 in Fiscal Year 2012. CRS's analysis shows that a handful of countries were driving this increase – in particular El Salvador, Guatemala, and Honduras. However, as with the general trend, the recent number of asylum applications from Mexicans and Central America are also lower than the numbers seen in the 1990s and early 2000s.

Levels of violence in Central America and Mexico have been rising sharply. A UNHCR study explains that levels of violence generated by organize crime have increased in Central America and Mexico in recent years, and patterns of displacement – including forced displacement – have changed. The report concludes that people who do not give in to the demands of these groups face serious threats and violence.[15] Following a recent visit to Central America, the US Catholic Conference of Bishops explained that violence and a breakdown in the rule of law "have threatened citizen security and created a culture of fear and hopelessness that has also functioned as a primary driver of migration." Violence and coercion – including extortion, kidnapping, threats, and coercive and forcible recruitment of children into criminal activity – are perpetrated by transnational criminal organizations and gangs."[16]

Expedited Removal and Safeguarding Asylum at the Border

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[13] Human Rights First, Refuge at Risk: The Syria Crisis and U.S. Leadership, November 2013, available at http://www.humanrightsfirst.org/wp-content/uploads/HRF-Syrian-Refugees-Jordan-Turkey-final.pdf.

[14] Testimony of Ruth Ellen Wasem, Congressional Research Service, December 12, 2013, for US House of Representatives Committee on the Judiciary Hearing on "Asylum Abuse: Is it Overwhelming our Borders?"

[15] UNHCR and International Centre for the Human Rights of Migrants, Forced Displacement and Protection Needs produced by new forms of Violence and Criminality in Central America, May 2012.

[16] U.S. Catholic Conference of Bishops (USCCB). Mission to Central America: The Flight of Unaccompanied Children to the United States. November 2013. *available at* http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf.

The History and Purpose of the Credible Fear Process

In 1996, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress created both "expedited removal" and the credible fear process. Under expedited removal, immigration officers have the power to order the immediate, summary deportation of people who arrive in the United States without proper travel documents. That authority had previously been entrusted to the Immigration Courts. When the expedited removal process was first implemented, the former Immigration and Naturalization Service (INS) applied it only to those who sought admission at a U.S. airport or border entry point without valid documents. Between 2004 and 2006, expedited removal was expanded to apply to those encountered within 100 miles of any U.S. border if they have been in the country for less than 14 days, and the number of individuals subject to this summary process has increased significantly.[17]

Expedited removal policies place the United States at risk of deporting asylum seekers fleeing persecution without giving them a meaningful opportunity to apply for asylum. To summarily deport an asylum seeker would be inconsistent with American values as well as commitments under the Refugee Convention and Protocol which prohibit the return of a refugee to any country in which the refugee's "life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion." The potential impact on individuals fleeing persecution is so dire that the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States called for repeal of expedited removal in its final report in May 1999.[18]

Recognizing the importance of U.S. commitments to protect those facing persecution, the U.S. Congress created a screening process. Individuals who express a fear of return are supposed to be referred for screening interviews with U.S. Asylum Officers to determine if they have a "credible fear of persecution," defined as a significant likelihood of establishing a claim to asylum. If an asylum seeker passes that screening process, he or she will be placed into removal proceedings before the Immigration Court to apply for asylum. Those who do not meet the credible fear standard are summarily deported. An individual who expresses a fear of return *must* pass the credible fear process in order to even be allowed to apply for asylum. In adopting the standard ultimately included in the 1996 law, the Conference Committee on the 1996 immigration law declined to include the higher "preponderance of the evidence" standard that had been included in the House version of the bill. In addition, Senator Hatch, a principal sponsor of the legislation, in discussing the Conference Committee's rejection of the higher standard, confirmed that "[t]he standard adopted ... is intended to be a low screening standard for admission in the usual full asylum process." Cong. Rec. S11491 (Sept. 27, 1996)(daily ed.).

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[17] U.S. DEPT. OF HOMELAND SECURITY, IMMIGRATION ENFORCEMENT ACTIONS: 2008 4 (2009), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_08.pdf

[18] U.S. Commission on Immigration Reform, *U.S. Refugee Policy: Taking Leadership*, June 1997, at 38; *Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States*, May 17, 1999, at 45.

The "credible fear" process is not an asylum application itself. It is simply a screening process that will determine whether an individual who expresses a fear of return will be allowed to apply for asylum. Some examples of individuals who have been protected from summary deportation by the credible fear process include:

- An Eritrean Pentecostal man who was brutally tortured and detained for three years after being accused of belonging to a political opposition group;
- A Burmese Baptist woman who feared persecution by that country's military regime because of her protests for democracy and equal treatment of political and religious minorities;
- A Guatemalan family who were persecuted – and the oldest daughter killed – after the father joined an association that stood up to gangs with connections to the police; and
- A pro-democracy activist from Ethiopia who was detained for two years after distributing campaign materials and otherwise peacefully supporting an opposition political party.

Insufficient safeguards in Expedited Removal

The expedited removal process lacks sufficient safeguards to ensure that asylum seekers are not mistakenly deported. The bi-partisan U.S. Commission on International Religious Freedom (USCIRF), which conducted a comprehensive study of expedited removal, found serious flaws in the implementation of expedited removal. For example, immigration officers failed to inform individuals that they could ask for protection if they feared returning to their countries in about half of the cases observed by USCIRF experts, failed to ask critical questions relating to fear of return in about 5 percent of cases, and actually ordered the deportation of individuals who expressed a fear of return in about 15 percent of the cases observed by USCIRF experts.[19]

Over the years, human rights groups, academic studies,[20] and the press have documented flaws in expedited removal as well as individual cases of asylum seekers who were mistakenly deported to their countries of persecution under expedited removal.[21] Refugee women are particularly

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[19] U.S. Commission on International Religious Freedom (USCIRF). *Report on Asylum Seekers in Expedited Removal*. 2005. P. 54. at http://www.uscirf.gov/reports-and-briefs/special-reports/1892-report-on-asylum-seekers-in-expedited-removal.html.

[20] The Expedited Removal Study is a project of the Center for Human Rights and International Justice at the University of California, Hastings College of Law. The Study released comprehensive reports in 1998, 1999, and 2000, and a second report in October 2002 which evaluated a GAO report. The reports are available at www.uchastings.edu/ers.

[21] *See* Human Rights First (then Lawyers Committee for Human Rights), *Is This America? The Denial of Due Process to Asylum Seekers in the United States*, Oct. 2002 at 57-58; Eric Schmidt, *When Asylum Requests are*

vulnerable to the risks posed by expedited removal. For example, women who are survivors of rape and gender-related traumas may have great difficult talking about their traumatic experiences to immigration officers at the border, and some immigration officers still do not recognize that in some cases women are eligible for asylum due to fears of gender-based persecution. In one case documented by Human Rights First, a victim of severe domestic violence and rape was ordered deported under expedited removal because officers who interviewed her mistakenly believed that she would not be able to articulate a claim for asylum. Her deportation was averted after several U.S. Senators complained about the decision, and she was ultimately able to prove that she was eligible for asylum protection through a full asylum hearing.[22]

Access to Asylum

The USCIS asylum office should be adequately staffed to conduct credible fear interviews in a timely and effective manner, and to conduct these important interviews in person rather than by video-conferencing or telephone. The recommendations made by USCIRF to improve the conduct of expedited removal should be implemented. Congress should request that USCIRF conduct an updated study on expedited removal.

Detention, Parole and Alternatives

Asylum seekers who are placed into "expedited removal" are subject to "mandatory detention." An asylum seeker who passes through the credible fear/expedited removal process, and is placed into regular immigration court removal proceedings, is eligible to be assessed for potential release but only if he or she satisfies the relevant criteria. Those asylum seekers who expressed their fear of return at a U.S. airport or official port of entry, rather than those apprehended between the ports of entry, are considered "arriving" asylum seekers, and may be eligible for release under parole guidance only *if* they meet the relevant criteria. Immigration authorities – over many years, and spanning various administrations – have repeatedly recognized that arriving asylum seekers who pass the credible fear screening process are eligible to be considered for parole.[23]

Overlooked, N.Y. TIMES, Aug. 15, 2001. Articles relating to the Albanian rape survivor appeared *The New York Times* on Sept. 20, 1997 and Jan. 14, 1998.

[22] Human Rights First (then Lawyers Committee for Human Rights), *Refugee Women at Risk: Unfair U.S. Laws Hurt Asylum Seekers* (2002).

[23] See Michael A. Pearson, *INS Executive Associate Commissioner for Field Operations, Memorandum, Expedited Removal: Additional Policy Guidance* (Dec. 30, 1997) (hereinafter "1997 Memorandum"); U.S. Immigration and Customs Enforcement, Parole of Arriving Aliens Found to Have a "Credible Fear" or Persecution or Torture," signed by ICE Assistant Secretary Julie Myers, November 6, 2007; U.S. Immigration and Customs Enforcement, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution nor Torture, signed by Asistant Secretary John Morton, December 8, 2009. Although IIRIRA provides for the mandatory detention of those subject to expedited removal, once an individual seeking asylum has established a credible fear of persecution, he may be released on parole. INA § 235(b)(1)(B)(iv). As the INS at the time confirmed (in the above-referenced Guidance on

In order to be paroled, arriving asylum seekers must satisfy certain criteria. Key factors in assessing parole eligibility have consistently – over many years and various administrations – included that:

- the asylum seeker passes the credible fear screening process,
- the asylum seeker can establish his or her identify;
- the asylum seeker is not a flight risk/has community ties; and
- the asylum seeker does not present a risk or danger to the community.

The current asylum parole guidance for asylum seekers specifically states that "Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or the U.S. national security" and only authorizes release from detention on parole if ICE determines that the individual "poses neither a flight risk nor a danger to the community."[24]

Despite the possibility of applying for parole, many asylum seekers have been detained for months or years in U.S. immigration detention facilities. Over the years, Human Rights First has repeatedly documented the impact of immigration detention on asylum seekers. Some examples from Human Rights First's reports[25] include these examples of refugees who were detained, at significant cost to the U.S. government, for months or years in jails or jail-like facilities:

- A Liberian Pentecostal pastor who was detained in the United States for three and half months and denied parole, even though several ministers in the United States confirmed his identity and his religious work in Liberia. In Liberia, he had been targeted by the regime of Charles Taylor because he had criticized the use of child soldiers. He was only released from U.S. immigration detention after he was granted asylum.
- A Baptist Chin woman from Burma was detained in an El Paso, Texas, immigration jail for over two years. ICE denied several parole requests even though she had proof of her

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Expedited Removal) "[o]nce an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section 240, release of the alien may be considered under normal parole criteria." *See* INA § 235(b)(1)(B)(iv); *see also id.* § 212(d)(5)(A) (providing for parole "on a case-by-case basis for urgent humanitarian reasons or significant public benefit" for an alien applying for admission to the United States); 8 C.F.R. § 212.5(b).

[24] 2009 Parole Guidance at pp. 6, 8.

[25] Human Rights First, U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison (New York: Human Rights First, 2009), at pp 2 at: http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf; see also Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, (New York: Human Rights First, 2011) at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf and Human Rights First, *In Liberty's Shadow: U.S. Detention of Asylum Seekers in the Era of Homeland Security.* (New York: Human Rights First, 2004) at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Libertys_Shadow.pdf.

identity and family in the U.S.—only paroling her after 25 months in detention. She was subsequently granted asylum.

The bipartisan U.S. Commission on International Religious Freedom, in its comprehensive 2005 report, made a number of findings and recommendations relating to asylum seekers in immigration detention, including:

- **Asylum Seekers Detained in Facilities with Inappropriate Jail-like Conditions:** The Commission concluded that most asylum seekers referred for credible fear are detained – for weeks or months and occasionally years – in jails or jail-like facilities. The Commission concluded that these facilities are inappropriate for asylum seekers, and the Commission's experts found that these conditions create a serious risk of psychological harm to asylum seekers. The Commission recommended that asylum seekers be held in "non-jail-like" facilities when detained, and that DHS create detention standards tailored to the needs of asylum seekers and survivors of torture.
- **Parole Reforms Needed to Ensure Parole of Asylum Seekers who Meet Criteria:** The Commission's 2005 report found wide variations in asylum parole rates across the country based on its analysis of DHS statistics. The report also found no evidence that ICE was applying the parole criteria that were spelled out in the policy guidelines in effect at the time. The Commission recommended that DHS promulgate regulations on the parole of asylum seekers to ensure the release on parole of asylum seekers who meet the relevant standards, including identity and no security risk, and to promote more consistent implementation of parole criteria.

USCIRF subsequently issued "report cards" assessing DHS's responses to its recommendations, and in April 2013, the Commission issued a Special Report entitled: *Assessing the U.S. Government's Detention of Asylum, Seekers: Further Action Needed to Fully Implement Reforms*. In this report, the Commission found that, despite some progress, "[t]he U.S. government continued to detain asylum seekers under inappropriate conditions in jails and jail-like facilities," and recommended that more be done to "ensure that, when their detention is necessary, asylum seekers are housed only in civil facilities."[26]

With respect to parole for asylum seekers, the Commission noted that the December 2009 parole guidance was in line with USCIRF's prior recommendations, and urged additional steps to assure its effective implementation, including codification into regulations. The Commission explained in its 2013 report that:

> USCIRF has recommended that asylum seekers with credible fear who do not pose flight or security risks should be released, not detained and that such a policy be codified into regulations. Asylum seekers may have suffered trauma and abuse prior to arrival in the

[26] USCIRF 2013 report at p. 1.

> United States and detaining them after credible fear interviews may be re-traumatizing, with long-term psychological consequences.[27]

Current EOIR statistics indicate that asylum seekers actually appear for their immigration court hearings at high rates. According to statistics that the U.N. High Commissioner for Refugees (UNHCR) has obtained from the EOIR, in Fiscal Year 2012 only five percent of completed asylum proceedings had an in absentia removal order.[28]

Alternatives to Detention

In cases in which additional supervision is needed to assure compliance by an asylum seeker, ICE can use more cost-effective and humane alternatives to detention rather than automatically resorting to detention which is not necessary in many cases to achieve the government's objective of compliance. These alternative mechanisms can greatly enhance appearance rates at both hearings and for deportation.[29] Julie Myers Wood, who previously served as Assistant Secretary of ICE, recently reported that 97.4% percent of participants in the ISAP II alternatives to detention program used by ICE appear at their final immigration court hearing, and 85 percent comply with removal orders.[30] The government may utilize a range of alternatives to detention, similar to alternatives used in criminal justice systems, for immigrants in removal proceedings. Alternatives to detention include electronic monitoring, telephonic or in-person reporting requirements and other tools in order to support appearances in immigration court and removal proceedings. Community-based support programs, which often include a strong case management component, have also been reported to be successful in achieving high rates of compliance.[31] Whereas a detention bed costs $164 per person per day, alternatives can cost as little as 17 cents to $17. The Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy; the Heritage Foundation; the Pretrial Justice Institute; the Texas Public Policy Foundation (home to Right on Crime); the International Association of Chiefs of Police; and the National Conference of Chief Justices have endorsed alternatives as cost-saving.

The Filing Deadline: Barring Legitimate Refugees

The filing deadline bar on asylum – which was enacted following concerns about fraud and abuse in the asylum system in the early 1990s – is actually barring legitimate refugees with well-

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[27] USCIRF 2013 report at p. 9-10.

[28] Statement of Leslie E. Velez, UNHCR to House Committee on the Judiciary Hearing on "Asylum Abuse: Is it Overwhelming our Borders?," December 12, 2013.

[29] Martin, Steve and Julie Myers Wood. "Smart alternatives to immigrant detention." *Washington Times*. March 28, 2013, available at http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/.

[30] Obser, Katharina. "How to Renew the Commitment to Immigration Detention Reform." *Huffington Post*. January 27, 2014. http://www.huffingtonpost.com/katharina-obser/immigration-detention-reform_b_4661647.html

[31] See Human Rights First, *U.S. Detention of Asylum Seekers*, p. 63-67; Vera Institute of Justice, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program–Volume 1* (New York: Vera Institute of Justice, 2000), p. ii, iii.; Alice Edwards, *Back to Basics*, p. 84; International Detention Coalition, There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention (Melbourne: International Detention Coalition, 2011), p. 7-9; LIRS, *Unlocking Liberty*.

founded fears of persecution from receiving asylum in the United States. It does not bar cases because they are fraudulent; it bars cases based on the date they filed, regardless of whether or not the individual is credible and regardless of whether or not the individual is a refugee facing well-founded fears of persecution. As detailed above, the U.S. asylum and immigration systems have a wide range of tools and mechanisms to identify and tackle fraud.

The deadline bar also causes very real harm to refugees and their families—preventing refugee families from uniting, undermining their ability to integrate and support their families, and putting refugees at risk of return to persecution. In its 2010 report, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*, Human Rights First documented that the filing deadline has barred refugees who face religious, political, and other forms of persecution from receiving asylum in the United States. Some examples of these refugees include a Burmese student jailed for this pro-democracy activities, a gay man who was attacked and tortured in Peru, and a Chinese woman who faced persecution due to her assistance to North Korean refugees.[32] Other examples include:

- **A Congolese nurse and human rights advocate denied asylum because she could not prove her date of entry to the U.S.**: A nurse active in a human rights organization in the Democratic Republic of Congo was falsely accused of involvement with an opposition group, arrested, tortured, and raped by prison guards before she escaped. A U.S. immigration judge ruled that she faced a clear probability of persecution, but denied her asylum based on the filing deadline, stating that she could not prove the date she entered the United States.

- **An evangelical Christian determined to face clear probability of persecution denied asylum based on filing deadline.** An Uzbek evangelical Christian feared returning home after learning of increased attacks against and detentions of evangelical Christians in Uzbekistan documented by the U.S. State Department and U.S. Commission on International Religious Freedom. He was advised by an attorney that he was not eligible for asylum because he had been in the United States more than one year—even though the significant increase in religious persecution should have made him eligible for an exception based on changed circumstances. Eventually he hired a new attorney and submitted an asylum application. But both the immigration court and the Board of Immigration Appeals denied asylum because of the filing deadline.

- **Pakistani human rights advocate denied asylum and separated from family.** This asylum seeker had a long history of human rights activism in Pakistan, representing women, children, and religious minorities through a free legal aid clinic. Islamic extremists threatened his life. He sought refuge in the United States, hiring an attorney to help him apply for asylum within a year of arriving in the U.S. But this attorney and two subsequent attorneys (all now disbarred) mishandled his claim. Despite being found credible and otherwise eligible for asylum, both the immigration court and the Board of Immigration Appeals denied

[32] *HRF Report Asylum Filing Deadline, supra* note 3, at 1-2; 9; 33; 35.

his request for asylum based on the filing deadline. He was extended only withholding of removal, which, unlike asylum, does not allow for his wife and child to join him in the United States, or even allow him to travel to see them in a third country. He has not seen his family in years.

The filing deadline is a particular barrier for women seeking protection from persecution. As detailed in Human Rights First's 2010 report on the filing deadline, women who have fled persecution relating to honor killings, forced marriage, domestic violence, Female Genital Mutilation (FGM) or other gender-related persecution may be unaware, after escaping and coming to the United States, that they may qualify for what is popularly referred to as "political asylum." Victims of sexual and gender-based violence, resulting in severe trauma, will often be unable to discuss and revisit their traumatic experiences, but must do so in order to apply for asylum. A comprehensive statistical study indicated that the people who apply for asylum many years after fleeing to the U.S. are disproportionately women. For instance, about 9% of women asylum seekers (11,000 women in the study's data pool) filed four or more years after entry. 44% of all women who missed the deadline were found to not qualify for an exception to the bar.[33]

Some examples of women affected by the bar include:

- **Rape Survivor with AIDS and paralysis initially denied due to deadline bar, prolonging resolution of her case**. A woman with links to the political opposition in an African country was raped by government soldiers and contracted HIV as a result. Following her arrival in the U.S, she was hospitalized with AIDS and subsequently developed a nerve disorder which left her paralyzed. The woman's asylum request was rejected based on the filing deadline, despite extraordinary circumstances relating to her serious medical conditions and was only granted more than a year later, after litigation in immigration court.
- **Victim of trafficking and rape denied asylum based on deadline bar.** A teenage victim of trafficking and rape applied for asylum while still a minor, thirteen months after entering the country. Despite extensive evidence and testimony attesting to her trauma and difficulties to talk about what had happened to her, both the immigration court and BIA denied her case.

In addition to barring refugees who face religious, political, and other forms of persecution from receiving asylum in the United States, the filing deadline also undermines the efficiency of the asylum and immigration court systems. As detailed in the academic study (referenced above), the filing deadline has delayed the resolution of asylum cases, diverted limited time and resources that could be more efficiently allocated to assessing the actual merits of cases, and led thousands of cases that could have been resolved at the asylum office level to be shifted in to the increasingly backlogged and delayed immigration court system. In testimony before the Committee on the Judiciary, United States Senate, the (then) Chair of the American Bar Association's Commission on Immigration, Karen Grisez stated that, "eliminating the one-year

[33] Schrag, Philip G., Andrew I. Schoenholtz, Jaya Ramji-Nogales, and James P. Dombach. "Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum." *William and Mary Law Review*. 2010. Vol. 52, No. 3.

deadline will restore fairness to and increase the efficiency of the process, preserving the limited resources available for evaluating asylum cases on the merits."

Conclusion

Every day at Human Rights First we see the ways in which our nation's commitment to protecting the persecuted makes a difference in the lives of individual refugees. As a beacon of hope for those seeking protection from persecution, the United States must preserve the integrity of its immigration system and provide asylum to refugees in a timely manner. To detect and address fraud on the system, U.S. immigration authorities have the legal and policy mechanisms necessary as outlined in this testimony. The Administration and Congress can and should take key steps to protect the integrity and effectiveness of the asylum system through measures including additional staffing and resources for the asylum, credible fear and immigration court removal systems; implementation of USCIRF recommendations; effective implementation of the asylum parole guidance; use of cost-effective alternatives to detention; support for Legal Orientation Programs that improve the efficiency of the immigration system; removal of unnecessary impediments that delay cases and block refugees from those country's protection; and addressing the impunity, rule of law and other challenges that contribute to the increased number of individuals fleeing violence in Central America and Mexico. The Administration and Congress should not implement any changes in law that would further expand or prolong detention for many asylum seekers or risk turning refugees back to persecution. Thank you for the opportunity to testify today and for your consideration of Human Rights First's views.

Mr. GOWDY. Thank you, Ms. Acer.

Before I recognize the Chairman, I would ask unanimous consent to add to the record the article referenced by Mr. Ting entitled The Asylum Seeker from The New Yorker. I hear no objection.***

I would now recognize the gentleman from Virginia, the Chairman of the full Committee, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Crocetti, in your testimony you mentioned that once the public became aware of these fraud reports, there was pressure to release them broadly, and thereafter, the contents of the reports became politicized. What did you mean by that? And explain how the content might have changed once there was pressure to release them broadly.

And in that same regard, once the content of the fraud report became public, did USCIS interfere in the workings of the Fraud Detection and National Security Directorate, the FDNS, and what do you think would be the best way to ensure that the FDNS is able to continue its work unhindered?

Mr. CROCETTI. Thank you, Chairman.

It is important to understand that back in 2004-2005, when we developed this benefit fraud assessment tool, we had no data. So our immediate need was developing an internal tool in which to focus our procedures and guidance to the fraud officers that were just being hired and trained and placed out into the field. There was no intention or plan to use it as a public document to release externally.

Taking that approach actually was very helpful because we were able to actually complete four benefit fraud assessments, and the one in particular, the religious worker assessment, in which we found a 33 percent fraud rate, resulted in the development of regulations that have since made significant improvements in that program and considerably reduced double-digit fraud rates to single-digit. That was the objective of the benefit fraud assessment.

As the information became more public—it started with the H1B, of course, given the interests of the H1B visas, et cetera—we realized corporately as an agency that we had to make modifications to the methodology and the approach because all of the information was going to be disclosed publicly. So I was instructed that the assessments would no longer contain a recommendation with regard to recommended improvements because there was an internal concern that there would be a knee-jerk reaction that could perhaps be too extreme. And the data that we were using certainly had some methodology issues, and I can explain that.

One of the things in our immigration world—it is just like trying to find any files. Over the years, you have seen a number of reports. Getting legacy data from legacy mainframe systems and then trying to locate files and getting those files and obtaining everything——

Mr. GOODLATTE. Mr. Crocetti, let me interrupt since I have a very limited amount of time.

Mr. CROCETTI. Okay.

***See Appendix for this submission.

Mr. GOODLATTE. I will give you one more question here. In your testimony you state that in order to ensure the integrity of any benefit or entitlement program, the ability to detect, confront, deter, and prevent fraud—we need that. To do this effectively, we must be both proactive and reactive, proactive in the sense of performing fraud and risk assessments, compliance and quality assurance reviews, and other studies and analyses, and reactive as in conducting investigations with regard to individually suspected fraud cases.

In your opinion, is USCIS proactively preventing fraud today?

Mr. CROCETTI. Yes, but I believe the agency is too reactive. I do not believe the agency is as proactive as it could be, which is evinced by the fact that we have not had any benefit fraud assessments done in the past several years.

Mr. GOODLATTE. Thank you.

Mr. CROCETTI. And I think our reactive nature of just identifying fraud leads and investigating them is exactly why legacy INS failed. And we have to be more proactive and have the internal controls, studies, and analyses to make sure we have real-time data.

Mr. GOODLATTE. Got it.

Mr. Ting, pursuant to the Immigration and Nationality Act, arriving aliens are subject to mandatory detention whether they are found to have credible fear or not until it is determined whether they have legitimate asylum claims. This crucial requirement is designed to prevent aliens from being released into our communities and becoming fugitives. The detention standard was enacted for the very reason that large numbers of arriving aliens absconded after claiming asylum and being released.

Under the statute and corresponding regulations, under limited circumstances, parole from detention is available to meet a medical emergency or, if it is necessary, to meet a legitimate law enforcement objective. However, these standards have been watered down by the current Administration via executive fiat.

Why do you think that out of 14,525 aliens claiming credible fear in 2012, only 884, 6 percent, remain in detention? What does this high release rate say about ICE's parole policy and the surge in credible fear applicants?

Mr. TING. Yes. I think the Administration is misusing the credible fear test to admit large numbers of people at our border who should not be admitted. And I agree that there is a conflict, I think, in the statute, frankly, between the mandatory detention provision and the provision that says we are going to use the credible fear standard to provide a kind of screening at the border. So I think there is a contradiction, and I think the Committee should think about clarifying that.

I have proposed taking the credible fear standard entirely out of the statute—I do not think that is what the credible fear test was invented for—and preventing that conflict from arising, leave the mandatory detention in, but take the credible fear test out, which is obviously being used to admit people who ought not be admitted to the United States.

I was just talking to some old INS people here and we were saying that in the old days when people came to the border and said

we want asylum in the United States, we would say, fine, come back in 2 weeks or whenever and we will have someone at the border. You can do the interview at the border, but we are not going to let you in pending that hearing. And this credible fear standard has given the Administration a way to say we are going to let you in now and you can come back later on for a substantive hearing if you want.

Mr. GOODLATTE. Thank you.

Thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Virginia.

The Chair will now recognize the Ranking Member of the full Committee, the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you so much, sir.

First of all, I would like to welcome Eleanor Acer from Human Rights First. They have been before us before and the work that your organization does is phenomenal. And I am very glad that you are the Director of the Refugee Program.

Now, one of the witnesses, Mr. Ting, recommends eliminating asylum protection and instead enhancing what is now known as withholding of removal. This got my attention right away, and I wanted to evaluate your feelings about such a proposal.

Ms. ACER. Thank you, Congressman, for that question, and thank you for your kind comments. I appreciate them.

That issue was resolved long ago, and it definitely would not be a good idea now. The United States should not be denying its protection to refugees with well-founded fears of persecution. That is not who we are and it does not send a very good signal to the rest of the world.

The higher withholding standard basically is too high. I mean, what would we have? People leaving Syria and fleeing for persecution and we are going to say, okay, is it a 55 percent chance likely that you are going to be returned to persecution? That is not an appropriate standard. We should not make people take those kinds of risks with their lives. It is just unworkable really.

The well-founded fear is the standard that is in the Refugee Convention, that our Supreme Court—and that we have been applying for many years. There is no reason to dial back the clock. There are many other methods of dealing with whatever concerns there are that need to get addressed in the system.

Thank you.

Mr. CONYERS. Thank you very much.

I wanted to talk about access to counsel, whether we are going to save money or be more efficient. Are there any cases that Human Rights First has worked on where a case outcome might have been different or where less strain may have been put on the immigration system had a client been represented earlier in the process?

Ms. ACER. You know, we actually see many cases of individuals who go through the asylum office who are unrepresented. We interview cases very thoroughly before we take them on, and we see people all the time who have been referred from the asylum office, but yet, they have got credible cases that meet the standards. And then we are able to recruit pro bono lawyers to take those cases on, to gather the extensive documentary and other evidence that is

often submitted in cases, to gather supporting evidence where it is available and where it is reasonable to expect it. And that really makes a difference for people. Counsel makes an incredible difference. We see day in and day out how much it does. And so many people go through the system unrepresented. I think it is around 50 percent, and for those in immigration detention, around 80 percent are unrepresented.

Mr. CONYERS. Is it reasonable that we should shoot for a goal that would allow people to have lawyers in case they cannot afford them?

Ms. ACER. Yes, I think it is a real problem because technically we do allow people to have lawyers, but people are often in very remote detention centers. There are no legal services available there. There may be very limited nonprofit. You may find a local Catholic Charities office an hour away struggling to reach this facility. So it is incredibly important for people to be represented through our system. It is a very complicated system, issues of whether families stay together and, in asylum cases, whether or not someone is returned back to persecution. These are critical issues and people are navigating a very complicated system all by themselves.

I know people think that somehow it is sort of really, really easy to get asylum. We have pro bono lawyers who work with us who work at major law firms, and they cannot believe how complicated these cases are often and they are often shocked at how difficult the process is.

Mr. CONYERS. Thank you very much.

We are trying to figure out—and I am going to ask this question of the former chief of the Fraud Detection Office, Mr. Crocetti. We are trying to improve the ability to detect and fight fraud. Have you noticed changes over the years? Do you see any improvement going on?

Mr. CROCETTI. Yes. I mean, when compared to pre-9/11 under legacy INS, absolutely. There have been unprecedented improvements and more proactive efforts, i.e., the benefit fraud assessments, administrative site visits.

However, I am concerned that over the past couple or so years, things have not progressed and they are not as proactive. And I am very concerned about that. I am very passionate about it obviously. I just cannot let go of it. But we need to be much more proactive in the area of benefit fraud assessments and compliance reviews to know where the fraud is and not wait until we are reacting and investigating cases. The volume is overwhelming. As it is now, they cannot handle it.

Mr. CONYERS. Well, I thank you.

My time is up, so I yield back.

Mr. GOWDY. I thank the gentleman from Michigan.

I am going to swap places with the gentleman from Utah and go last, and I would now recognize the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. I thank the Chairman.

It has been established here in the testimony affirmative asylum claims have doubled—doubled—in the last 5 years to more than 80,000. Mr. Ting, you talked about perhaps some of the ways to re-

solve this, but what do you think the root cause of this is? Why do we see such a growth in this area?

Mr. TING. Well, I think the explanation is going to be complicated. I think it boils down to communications and transportation, that we live in a communications age. It is much easier for people all around the world to understand the possibilities that are out there for them, and it is easier for them to get to the United States, one way or another, to take advantage of those possibilities.

One of my former colleagues in the economics department at Temple used to say the poor people of the world may be poor but they are not stupid. They are as capable of doing cost-benefit analysis to determine what is in their own self-interest as anyone in this room, he used to say. And they do it all the time, and we understand that. They use cost-benefit analysis to decide what they are going to do, and if the costs are low and the benefits are high, it makes sense to do something. And if you do not want them to do that, you have to raise the costs and lower the benefits. It is simple economics.

Mr. CHAFFETZ. Mr. Chairman, I would like to enter into the record—I ask unanimous consent—an article that was in The Wall Street Journal dated January 29. It is titled "Flow of Unaccompanied Minors Tests U.S. Immigration Agencies." It is basically referring to the U.S. Conference of Catholic Bishops that had forecasted 60,000 unaccompanied minors from Central America to cross the southwest border this year alone. That is up from about 5,800 roughly a decade ago.

The surge that we are seeing of unaccompanied minors, which creates a whole host of problems and challenges, 60,000 of them—do you see a root cause for that? Let us start with actually Mr. Crocetti here.

Mr. CROCETTI. I am not familiar with that issue.

Mr. CHAFFETZ. Mr. Ting, do you have any theories or insight or——

Mr. TING. Well, I think it is dramatic. It is still literally child's play to get across the border. Right? I mean, unaccompanied minors are getting across the border. That is how open the border is.

But I think the same phenomenon is at work. We live in the Internet age. Everyone understands everything that is going on everywhere. People understand possibilities that they may not have been aware of before. They know how to——

Mr. CHAFFETZ. Thank you.

Mr. Acosta, can you speak to this point—on the two points here?

Mr. ACOSTA. I can. As the Director in Mexico City, I actually led large-scale investigations where it was substantiated that unaccompanied minors were being smuggled by organized organizations operated from Central America, Mexico, and all the way into the United States.

If you look at some of the statistics I believe from July of 2012 to May of last year, there were more than 23,000 unaccompanied minors that were taken into custody. That does not count the ones that were able to reach the interior cities of the United States. That is a substantial number. There is a large amount of business for the cartels, the human smuggling operations that are operating in Latin America, and this is a very attractive business because the

cost for each child coming into the United States in some cases was $5,000 to $7,500 per child.

Mr. CHAFFETZ. Expand on that, the cartels, and what you see them doing with human and drug smuggling.

Mr. ACOSTA. Much more so now, Congressman, the human cartels are very organized throughout Mexico and certainly through Central America. They are very specific in what they do. They are good at what they are doing. And while we mentioned that 23,000 were taken into custody, it is not to say that they did not obtain a benefit in being detained along our borders because, for the most part, a large number of those unaccompanied minors were ultimately released to their parents who were residing in the United States.

Mr. CHAFFETZ. And again, along with this, how is it that our public policy—is it facilitating this? Is it encouraging this? Is it deterring them? What is it doing?

Mr. ACOSTA. We have always had a large amount of children coming to the United States. With the large undocumented population that we have in the country, it is going to continue. Certainly with our detention policy, with our release policy, it is a great encouragement for families to be reunited with their minor children.

Mr. CHAFFETZ. Yes, go ahead.

Ms. ACER. I am sorry. I was just going to add in one other factor that we have not touched on, and obviously, it is not necessarily something this Committee is focusing on, but that is the violence that is driving many of these children to end up coming here.

Mr. CHAFFETZ. Do you believe there is fraud?

Ms. ACER. I also would really urge——

Mr. CHAFFETZ. No, I am asking.

Ms. ACER. Of course, sir, there are incidents of fraud, and my testimony has detailed many.

Mr. CHAFFETZ. You have 25 pages of testimony.

Ms. ACER. I am glad you read them, sir.

Mr. CHAFFETZ. But it does not talk about fraud. That is the whole heart of this hearing. How do we prevent this? How do we fight against it?

I am in favor of the person who is legally, lawfully trying to go through this process, but the worry is you got so many people taking advantage of the system because—I mean, look at the numbers. It is just astronomical growth.

Ms. ACER. Thank you, Mr. Congressman. I actually did detail in there many, many safeguards that exist in the system. And I really want to stress the importance of making sure——

Mr. CHAFFETZ. You did not talk about the detection of fraud.

Ms. ACER [continuing]. The courts and asylum officer are actually well staffed enough to actually conduct their interviews and to eliminate that backlog, which I am concerned——

Mr. CHAFFETZ. I thank the Chairman. Appreciate it.

Mr. GOWDY. I thank the gentleman from Utah.

The Chair would now recognize the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Let me thank the Chairman for his courtesy and the Ranking Member for her courtesy as well and thank all

the witnesses, some of whom I have had the pleasure of working with.

Mr. Acosta, thank you for your service. Since we have engaged with each other over a number years when you served in your capacity in the Federal Government and I believe we have had these discussions, do you think a passing of a comprehensive immigration reform, delineating any number of methods of entry which then would separate, in essence, the bad guys from the good guys would be helpful in law enforcement?

Mr. ACOSTA. If I understand the question correctly, ma'am, it is would passing a comprehensive immigration reform help.

Ms. JACKSON LEE. Yes, in delineating the good guys from the bad guys.

Mr. ACOSTA. Well, I do not believe that comprehensive immigration reform would serve that particular purpose. I think that we need to institute the measures that we have that we are talking about today with the security checks of anybody that appears at our borders that is already inside the country.

Ms. JACKSON LEE. So you do not think the passage of immigration reform that gives new permission to work would be helpful to law enforcement at the border?

Mr. ACOSTA. Well, I think that any method that we can identify who is inside the country is certainly beneficial to our country. But I think I would separate——

Ms. JACKSON LEE. So you say that certain aspects of it might be beneficial.

Mr. ACOSTA. Well, I think that in identifying individuals in our country, but I think that is something that we should be doing anyway with law enforcement authorities working, especially when people game the system to get into our country.

Ms. JACKSON LEE. Well, you have the laws to deal with that, but you do not have the laws to ensure a fair process for people who may want to enter the country for work or otherwise. But thank you very much for your answer.

Let me just proceed with you, Ms. Acer, and let me thank you. And I understand you may be coming to Houston, so I look forward to knowing your location. I work extensively with a number of leaders in the business community, the Partnership, that is, the Chamber, the Greater Houston Partnership, solely 100 percent in support of comprehensive immigration reform. You may be coming to a location that will be receptive to some of your issues.

But let me just take note of the fact in as calm a voice as I might do so, and I have a question for you. As I understand, before I came into the chambers, there were persons expressing their First Amendment rights, and obviously, through the protocol of this Committee, were removed from the Committee. But they were expressing their consternation, their frustration, their hurt, and their pain.

One hundred fifty years ago when African Americans were experiencing that kind of pain, they engaged in something called Freedom Summer, and it was to emphasize to the Nation that we are, in essence, deserving of a fair play and justice.

So as a Member of Congress, I am committed to abiding by the laws, but I would expect that we will see thousands upon thou-

sands of individuals from all backgrounds coming to this Congress in the summer and finally saying enough is enough, the persons who may have been given asylum and others expressing themselves for someone to listen.

We can sit here in this Committee and talk about violations of the asylum law passed by Senator Kennedy in 1980. It started out with 50,000 asylum seeker provisions. Now I think we are up to 75,000. That is now some 24 years—more than 24 years—30-some years later.

So all I can say to my colleagues on this Committee is be prepared. Be prepared for those who are feeling the pain of injustice.

And let me be very clear as I pose this question to you. As I understand, asylum seekers come from potentially Syria, if they are not involved in terrorist activities. They come from some of the bloodshed and war-torn areas on the continent of Africa. They may come from, in years past, places like Burma. They come with the frustration of an onerous, murderous condition seeking asylum. All of a sudden, we have got asylum tuned only to the southern border, which baffles me because I have been on this Committee for a long time and I know that asylum seekers are children and parents coming from the worst conditions around the world that Americans may not even imagine.

So let me ask the question since I met with an immigration judge before I came here. In the southern district, we may have just two immigration judges. They are literally bent over for the lack of resources, the lack of staff, and the overloading. So I ask this question. What is the impact of the immigration court backlog on asylum seeker cases? Are there cases at Human Rights First that have been directly impacted by the backlog? In your opinion, what needs to happen to address the backlogs in our immigration courts? And I would appreciate your answer.

And I thank the Chairman for his charity on this answer. I note that there are 350,000 cases on hold right now.

Mr. GOWDY. Despite the fact that the red light is on, you may answer the question.

Ms. JACKSON LEE. I thank the Chairman.

Ms. ACER. Thank you very much, Mr. Chairman.

Yes, the backlog in the immigration courts is having a tremendous impact on our pro bono cases. First of all, it is actually making it harder for us to recruit pro bono lawyers because what lawyer is going to take on a case that might not have a court date for 2 or 3 years?

Also, that kind of a wait time for an asylum seeker is just not appropriate. It is not good for the integrity of the system and it does not help individuals who need to have their cases resolved, want to get on with their lives, and sometimes have children who are left stranded in very difficult or dangerous situations abroad. So I would definitely encourage anything this Committee can do to deal with the immigration court backlog and now also the asylum office backlog.

Mr. GOWDY. I thank the gentlelady from Texas.

The Chair will now recognize the gentleman from Texas, former Judge Poe.

Mr. POE. I thank the Chairman.

I do not know that the issue before us is whether there should be asylum or not asylum. I think the issue before us is the people who cheat to get in the United States. So I want to zero in on that issue specifically.

I appreciate the fact that you are here, Mr. Acosta. Thank you for your service especially in the Houston area. You did a good job and you still have an excellent reputation for your work.

It brings me to the point that many times the Members of Congress who are not on the border States do not have a clue what is taking place on the border. And having been to the Texas-Mexico border and then Arizona-Mexican border, New Mexico numerous times, it is a different area. It is a different world, and only, it seems to me, people who work there daily and the people who live there on both sides of the border really see what is taking place on the border.

But specifically, the issue before us is those people who lie to get into the United States, not bona fide asylum seekers, not people coming here the right way, but want to lie to get here.

And my understanding, Mr. Acosta—and I would like for you to weigh in on this. The different drug cartels that operate, Sinaloas, the Zetas, whoever, they get into a confrontation south of the border, a shoot-out. Their members, I understand, are told to go to the United States until things cool off, and one of the ways, when they get in the United States, if they are apprehended by your guys, which many of them are, they are told to seek asylum and go through the process of an asylum seeker to be safe in the United States from their territorial rivals, drug cartels.

Now, I do not know if that is true or not. I have heard that several times, but I would like for you and your expertise to weigh in on that situation of criminal gangs, criminal cartels, whatever using fraud asylum to stay in the United States temporarily or permanently.

Mr. ACOSTA. Thank you, Congressman. It is a pleasure seeing you and thank you for the kind comments.

Well, I think it goes without saying that we in Houston recognize that we have a large presence of cartel members who entered the country legally and illegally, and the violence has not been limited to the south in Mexico. As you recall, about a year ago, there was a shoot-out where a truck driver was shot by cartel members who were pursuing a shipment of narcotics that was destined north. Just 2 weeks ago, there was a young lady from Honduras who had filed for asylum who was killed in an open street in Houston, which received a tremendous amount of publicity, and it turns other there is a possibility that gang violence was partly behind that.

We know that cartel members—we know that criminals will seek any avenue to enter the United States if we make it accessible and it makes it easier to come to the United States—one, want to flee perhaps turfs that they might have lost in Mexico, secondly to perhaps continue their criminal activities here in the United States. It is all too common and very well known to our law enforcement authorities in Houston and throughout the State of Texas. So I think that the statements that are made that cartel members are coming into our communities is very true, whether it is legal or

not, and nothing is to prevent them from filing fraudulent asylum claims.

On a personal case, I know that I arrested a heroin trafficker more than 30 years ago when I was an agent in Chicago. Thirty years later, the two sons of that individual were actually heading up the cartel operations of the Sinaloa Cartel in Chicago, Illinois. So I think that exemplifies the risk that we have in our community for any individual entering the country, as you state, by lying, whether they are coming in for asylum or seeking any other benefit. And I think we owe it to the American people to be vigilant not only along our borders but inside the cities in the United States.

Mr. POE. Would you agree with me that when we have the fraudulent claims—those really do damage to the bona fide people that are seeking asylum from persecution all over the world who are trying to get here? That hurts their cases because you have the fraudulent, the cheats, that are trying to use the same system. Would you agree or not?

Mr. ACOSTA. Congressman, over the years, this has been proven that not only do they hurt other individuals seeking asylum, but it jams the system. It backlogs the cases that we adjudicate. It takes away from resources that we could be adjudicating, cases that deserve to be granted. And, yes, they do hurt the genuine cases that need to be approved or adjudicated on a timely basis.

Mr. POE. I thank the Chairman.

Mr. GOWDY. I thank the gentleman from Texas.

The Chair will now recognize the gentleman from Florida, Mr. Garcia.

Mr. GARCIA. Mr. Chairman, thank you very much. I want to start by thanking the Chairman for his efforts and the consideration he has shown the other side of the aisle.

It is still my sincere hope that we can get to comprehensive immigration. However, it is disappointing that instead of working to that end, we are here playing with probably the least fortunate of all folks who come before our immigration system.

I cannot help but question the Committee and Congress' commitment to getting something done. It took a year for the Republicans to come out with principles. Yet, 1 week later, Speaker Boehner, the only one that can bring a bill to the floor, back-peddled on immigration reform. Why?

We have 197 co-sponsors to H.R. 15. I know a lot of my colleagues on the other side of the aisle would like to vote for a bill to get this done and move forward. But, no.

My colleagues claim that they do not trust the President. After 1.9 million deportations, how much more enforcement? No President has spent more money on the border than the President of the United States. We have the lowest border incursions in over 40 years. There is an unprecedented manpower on the border. In fact, when the Government shut down, places like El Paso had 30,000 and 40,000 workers going home. We now have some of the securest cities in America across the border from some of the most insecure cities.

The time has come to get immigration reform. We should focus on that. I know the Chairman is willing to do that, but we have

got to get the leadership on the other side to put this on the floor and get a vote out.

Mr. Chairman, I will yield back the balance of my time. I will yield back to my colleague.

Mr. GOWDY. The gentleman has yielded to the gentlelady from California.

Ms. LOFGREN. Thank you, Mr. Chairman.

We do not have as many Members as you do today, so I am grateful to get a little bit of time just to make some corrections here.

In Mr. Ting's testimony at page 4—it was referenced by our colleague—there is an indication that there were 80,000 affirmative asylum applications made in fiscal year 2013. I would like unanimous consent to put into the record a report from the Congressional Research Service that actually indicates there were only 44,000 affirmative asylum claims in that fiscal year.

Now, this is an increase from the 25,000 in fiscal year 2009, but much lower than the 77,000 claims in fiscal year 1997 or the 63,000 claims in fiscal year 2001. So I think it is important to see that these claims go up and down and they often relate to what is going on in other parts of the world.

For example, right now, as has been mentioned, there is an epidemic of violence in Mexico and also in Central America. And so there has been an increase in claims from people who are escaping from that violence.

Not only is the United States being impacted with asylum claims, our neighbors to the south are being impacted. For example, the increase in asylum applications lodged by Central Americans to countries other than the United States have increased, a 432 percent increase in the number of asylum applications in Mexico, Panama, Nicaragua, Costa Rica, and Belize. So there is an epidemic and we are experiencing it, but our neighbors to the south actually are seeing an even greater increase than we are.

Now, that does not obviate the need to be alert to fraudulent claims. Nobody is arguing that we should not be vigorous in aggressively protecting ourselves from fraudulent claims, not the advocates for refugee services or asylees. In fact, we know if there is fraud, it hurts legitimate applicants. So there is not a disagreement on that score.

I would just note, Mr. Crocetti—and thank you for the service that you provided for our country for so many years and your continued interest in this. Many, as a matter of fact most, of the recommendations discussed in the report have been implemented in terms of the access to the databases and on and on. I assume, as you said earlier, that implementation of these recommendations have actually helped decrease fraud in the system you had indicated earlier.

If I am hearing you correctly—and I am going to take this to heart—the suggestion you are making is that we need a systematic kind of assessment as we go forward. I am not sure that that is not happening, but I think that that makes sense. And I intend to pursue this with the Administration. It is really a matter of if we are doing well, we want to make sure that we continue to do well.

For example, the drug cartel members—they are not eligible for asylum. I mean, they are barred under the act, but we want to make sure that we find out who they are.

And with that, I thank the gentleman for yielding and I yield back. I will wait for my own time.

Mr. GOWDY. I thank the gentlelady from California.

The Chair will now recognize the gentleman from Ohio, Mr. Jordan.

Mr. JORDAN. I yield my time to the Chairman.

Mr. GOWDY. I appreciate that, and I will hold my time until the end and recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I appreciate this hearing today and the witnesses.

A number of things come to mind to me. As I listen to the discussion about 70 percent fraud—or likely fraud is the way I would interpret that—and I think about my business world, if I had 70 percent of any of the division or department or endeavor I was involved in and it had been going on since maybe 2005—and we lament that we do not have current data to work with—I would first start with what can we do to put this all back together. Can we do that quickly? If not, what would the world look like if we did not have this program?

And I listened to Chairman Goodlatte speak about how the United States provides asylum to a greater number than all the other Nations in the world put together. So this is a great, big bite out of the broader society that we are in.

But it does not seem to me that there is a high level of anxiety about solving this problem. It seems that there are people here politically that are willing to accept a significantly high level of fraud without an urgency to fix it. When I see the numbers of unaccompanied adults arriving here in the United States, a number that I believe Mr. Acosta said has gone to a multiple of seven times what it was—I listened to Chris Crane, the President of the ICE Union on a public statement the other day that he thought that they would probably interdict around 50,000 unaccompanied minors in the United States, and now I see this number of 60,000 unaccompanied minors.

This is something to me that I would ask the reason for this. I would probably turn to Mr. Acosta on this. Can it be rooted in the reauthorization of the unaccompanied alien minor protections from 2008? Did you see a change in that in the acceleration then as the unaccompanied minors got two bites at the apple and all of the access to benefits?

Mr. ACOSTA. Well, I think we have seen a large increase for a number of reasons. One is because over the years, Congressman, we have had a high percentage of illegal entries into our country. We went from early 2000 with estimates of 30 million illegal aliens in our country to over 12 million illegal aliens in our country right now, many who come from Central and South America, many who left their children behind. When we talk about the change, we have seen a lot of the efforts by the parents to continue reuniting the children.

I will add that 1 year ago we had a reduction of the illegal entry of adults coming into our country, but the numbers of unaccom-

panied minors entering the country illegally continued to increase in the surges that we are talking about right now.

Mr. KING. And are most of them being brought in by coyotes?

Mr. ACOSTA. Well, with my experience when I was the Director in Mexico City, we had large smuggling organizations that were participating in this scheme. And I will share with you that my belief from what I know, most of the human smuggling operations are working jointly with the members of the cartels in Mexico. It is well organized. And I can assure you that if a large number of children are being sent to the United States and smuggled into the United States, it is with the knowledge of cartels or other human smuggling organizations.

Mr. KING. Are you aware of any of them being required to bring illegal drugs on their back as a price to their entry into the United States?

Mr. ACOSTA. I am not aware of any children. However, we know the tactics that the cartels use. You might recall, Congressman——

Mr. KING. Thank you, Mr. Acosta.

Mr. ACOSTA [continuing]. Several years ago, 72 people were executed in Mexico by cartel members.

Mr. KING. Thank you. We know that those numbers have gone—the deaths have all been in the thousands, and it is tragic down there. And I appreciate your bringing that up.

I would just point to a Center for Immigration Studies report by Jessica Vaughn, "Deportation Numbers Unwrapped." And I would ask unanimous consent to enter it into the record.****

Mr. GOWDY. Without objection.

Mr. KING. Thank you, Mr. Chairman.

And I would point out too this. Within the context of this discussion, we have heard repeatedly that the deportations under the President are greater than they have ever been. And this report is an objective report, and it is a summation that goes clear back. It shows that the deportations right now—the removals right now all together, and that in the definition of deportations used in this report, are lower than they have been since 1973. The highest deportations that we had may have taken place in 1986 except under Bill Clinton in his last year in 2000, he actually set the record with a number over 1.8 million deportations. So I make that point here into the record, and I will introduce that report.

But I would turn to Mr. Ting and ask this question. If you have a problem and you are trying to fix this problem and you do not see that there is a solution coming—I appreciated your comment about the cost-benefit analysis that people make no matter what their particular economic status might be. And now here from the United States' viewpoint, cost-benefit analysis—it is not working so good for us, and we are having trouble analyzing that. So I would ask you do you believe that if we applied a bonding requirement to the people that are being released into this country under the asylum application, if that would help fix this problem and what your view might be on that.

Mr. TING. Well, it would certainly alter the cost-benefit analysis. There would be one additional cost to worry about. And I think,

****See Appendix for this submission.

again, if we want less of anything, we have to raise the costs and lower the benefits. That is just a basic fact of economic life.

Mr. KING. I thank you.

My time has expired and I yield back.

Mr. GOWDY. I thank the gentleman from Iowa.

The Chair will now recognize the gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman. I wonder if the Chairman would yield to a question real quick. I am wondering. I have heard a lot of comments about immigration reform during this hearing today, and I know you and I were not here during 2008 to 2010. But I wonder if the Chairman recalls what immigration reform was passed by the Democrats when they were in charge of Congress and the people of America had received promises from the President of the United States that they would do comprehensive reform when they were in power.

Ms. LOFGREN. Would the gentleman yield?

Mr. LABRADOR. No.

Mr. GOWDY. I would tell the gentleman from Idaho, as he knows, I was a prosecutor during that time period doing my best to get to heaven. So I cannot tell you what did or did not happen during that Congress.

Mr. LABRADOR. All right. Thank you, Mr. Chairman.

Mr. Crocetti, we heard testimony last month that asylum credible fear interviews are just 20 minutes long or less. Do any of you believe—do you or anybody on the panel believe that giving the asylum officers maybe 20 minutes is very difficult to make a credible fear determination?

Mr. CROCETTI. Yes, I do. I think it is very difficult to make an accurate finding in less than 20 minutes or 30 minutes.

Mr. LABRADOR. So how would you suggest changing that?

Mr. CROCETTI. Well, one of the things that is absolutely essential to a decision maker, an adjudicator, is that as many system checks as possible could be done to identify any and all information to determine credibility and an individual's identity. So you can collect the biometrics and you can do the background checks, but the odds are there are not any records on most of these people. So now you got to focus on the consistency of the story and the credibility. Overseas verification of information and facts—one of the things I would do is build and expand the overseas capability of CIS to verify events, facts, and information instead of rushing judgment to making decisions in 10, 20, 15 minutes and releasing people.

Mr. LABRADOR. Mr. Ting, do you have any comments about that?

Mr. TING. Well, I would build the State Department into this process rather than building an entirely new infrastructure for CIS overseas. There is an infrastructure over there. It is called our Foreign Service. We have knowledgeable people in every country who speak the language and have studied the culture, and that is a resource that ought to be drawn upon. It used to be drawn upon routinely in asylum adjudications, and it ought to again. In fact, again, talk to the career CIS people. I think there are a lot of career CIS people who agree with that and who regret that the State Department has been taken out of the process.

Mr. LABRADOR. Mr. Acosta, do you have any comments on that?

Mr. ACOSTA. Yes. Having actually served 13 years outside the United States with INS, I know that our offices are as responsive as possible. They are experts at this particular process.

While I do not disagree completely with what Dr. Ting is saying, I think we have the expertise but we need more resources for CIS outside the country because that is the business that we are in. I know that adjudicators take it very seriously and I know they can respond. But as Mr. Crocetti stated, we need timely responses. We cannot wait 90 days to adjudicate a petition inside the United States. And in some cases, as the report presented here today has shown, we did not receive responses on, I believe, something like 27 of the requests that were sent outside the United States. That is not acceptable, Congressman.

Mr. LABRADOR. Ms. Acer?

Ms. ACER. Congressman, thank you.

Yes, I would add that I think one of the most important things that can be done is to staff USCIS' asylum office so it has enough officers to conduct credible fear interviews and to devote as much time as needed in each individual case and that those interviews should be conducted in person not by videoconference. I think that is very important as well.

I also wanted to note—there was a question before about bond. Many asylum seekers actually are only given an opportunity for release with bond. And I spoke just the other day to an ABA project working with people at the border, and they stressed to me how few people are actually getting released right now.

I would like to also add——

Mr. LABRADOR. If I can reclaim my time. Thank you.

Mr. Crocetti, you also mentioned in your testimony that once the public became aware of these fraud reports, there was pressure to release them broadly. Thereafter, the contents of the reports became politicized. What did you mean by that? Can you please explain how the content might have changed once there was pressure to release them broadly?

Mr. CROCETTI. Well, once FDNS lost most of the control of the instrument, the benefit fraud assessment, after it went through an internal review process. And senior management is obviously very concerned about what a document (that is speaking for the agency) is going to say publicly because it has repercussions. So as a result of that, there were also the internal politics with regard to getting the approval process. It would take forever. I would refer to it—as I am sure most of you have heard—paralysis by analysis. And we could no longer get the reports done due to internal and external politicalization.

And I would suggest, as in my statement, that Congress mandate that these reports and analyses be done and that a report be provided to Congress in an ongoing manner. Because if you do not—and I have been through this for nearly 4 decades—it changes with the Administration and the party, the majority party, and it keeps jerking the agency back and forth. We careerists would really like to have a mandate so we could focus on that and get it to you with little political interference.

Mr. LABRADOR. Thank you very much.

I yield back my time.

Mr. GOWDY. I thank the gentleman from Idaho.

And the Chair will now recognize the gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Well, thank you, Mr. Chairman.

I think sometimes extravagant things are printed in the press and it is really a distortion of what is really going on. And that does not mean that there are not things that we can do to make this system work better. And I think there have been some helpful discussions here.

I have long thought that the country conditions—really, the State Department is in the best position to provide that information, and they do so on a yearly basis but they do not update it.

Having said that, sometimes there is open source information. I mean, I remember many years ago when I was an immigration lawyer and I had an asylum case, and here was the case. It was a gentleman who was here, and he was Iranian. The Shah fell to the radicals. But he was Jewish. And what they were doing in Iran was they were machine-gunning the Jews. We could not get any information out of Iran at the time, but there was plenty of open source information. And we were able to make the credible fear case. Obviously, the law has changed since that time, especially the 1996 act that I participated in.

I think it is important to note in terms of the report that you have discussed, Mr. Crocetti, that the indicators of possible fraud that have been referred to—specifically the report says that the negative credibility finding does not necessarily demonstrate that there would be fraud. I mean, there can be a lot of reasons why you might have a credibility issue. You may have a poor memory. You could have a translation error.

The failsafe is that you are going to court and you are going to have a vigorous process where we have, in most cases, the asylee applicant is not represented, but the Government sure is. And if you can make that claim, you have got some failsafe there.

So I think that does not mean that this is a perfect system, but I think that the concerns that were expressed by Mr. Acosta about things that happened in 1980 and 1988 and 1994—certainly those were very much on the agenda of Congress when we revisited these issues. In the 1996 act, I think we have created some problems there in terms of the material support issue, for example. We have not gone into that because this is not a hearing about that. But as we know, for example, if you take up arms in any case, you are barred.

And I remember talking to Secretary of State Colin Powell because the Montagnards, the Mennonites who were Montagnards, were barred from asylum. And, of course, Colin Powell, before he was Secretary of State, was a soldier in Vietnam and he had a tremendous attachment to the Montagnards and what they did for American soldiers. They were barred under our asylum laws because of their role on our side in the war. And while we messed around trying to refine this issue, we finally just took the Montagnards out of the mix. But to make that sensible it is very important.

I would just like to also note that my friend, Mr. Labrador, constantly says, well, when the Democrats were in charge, we did not

do immigration reform. Obviously, immigration reform did not pass. But I would like to note that in the 109th Congress, the Democratic controlled Senate passed a bipartisan comprehensive reform bill, and the House, then Republican controlled as now, refused to take it up and passed an enforcement-only bill. In the 110th Congress, the Democrats in the Senate tried to pass a bipartisan bill, but the Republicans blocked it and it fell apart. And I chaired the Immigration Committee on this side. We tried to do something modest, which was to provide relief for the families of U.S. soldiers. And I will never forget that appalling markup where our efforts to help the husbands and wives of American soldiers was defeated by the rhetoric. In the 111th Congress, that is when we had our 25-member bipartisan group working to put together a bipartisan bill, which we eventually did. But we did pass the DREAM Act which the Senate was unable to pass.

So I remain hopeful that we will be able to work together to refine this system, but even more, those of us here working in good faith can put our heads together and come together with an effort to reform the immigration laws.

And just a final issue, Mr. Chairman. As I had mentioned privately, we do have an issue of unaccompanied minor children. There is a surge. Those are not asylum cases. Those are children who have been actually apprehended at our border. We need to understand what is going on there. There is a multinational effort underway that includes El Salvador, Honduras, Guatemala, Mexico, and the United States to try and come to grips with that. It is my hope that we again—I just mentioned that I would love to have the Chairman participate—that we can work in a multinational way to make sure that the right thing is happening there and that children are not exploited or injured.

With that, I yield back my time.

Mr. GOWDY. I thank the gentlelady from California.

The Chair will now recognize himself for questions.

Mr. Ting, there have been a number of studies referenced today with various levels of fraud detected, some as high as 70 percent, some 30 percent. I am not smart enough to know what the percentage of fraud is. I think I am smart enough to know that nothing will sap the generosity of my fellow citizens quicker than fraud and a perception that we are doing nothing about it. So whether the number is 10 percent, they expect us to do everything we can to eradicate that 10 percent.

So against that backdrop, I want to pursue two different lines with you. Firstly, detect and deter. I think Mr. Crocetti said the standard is a mere preponderance of the evidence, which is the lowest legal standard by which you would prove any claim in any court. That does not get any lower than slightly tilting the scales of justice. Has there ever been any thought to raising the standard of proof above mere preponderance of evidence?

Mr. TING. Well, I actually think preponderance of the evidence is a pretty respectable test. The test for withholding of removal is more likely than not. And as somebody has said, you know, 51 percent does it.

Mr. GOWDY. It is not even 51 percent. It is 50.1 percent.

Mr. TING. Yes, 50.1 percent does it. That is a preponderance of the evidence. And that was the test when we did not have 208, when we only had withholding of removal. That was the test for withholding of removal.

And indeed, when 208 was adopted, the position of the Service and the BIA was that the standard would be the same under asylum. And they litigated that issue. It went all the way to the Supreme Court in a case that I cited in my presentation called Cardoza-Fonseca in 1987. The Supreme Court in a split decision ruled that there was a standard even lower than that that applies to asylum. And the example that was used in the majority opinion was that if there is even a 10 percent possibility of persecution, that that would be sufficient under 208. That would not be sufficient under withholding of removal, but 10 percent as opposed to the 50.1 percent that you just talked about for withholding of removal, that a 10 percent possibility of persecution would be sufficient, legally sufficient, for authorization of asylum.

So that is why I am saying maybe we ought to get back to that. Maybe that 50.1 percent is not such a bad standard compared to the 10 percent the Supreme Court has authorized in Cardoza-Fonseca.

Mr. GOWDY. I would agree 50.1 is more than 10, but 50.1 is the lowest standard above which any claim has to be proven in a court in this country.

Mr. Crocetti also mentioned, because I made a note, that these are credibility-intensive inquiries, that credibility is sometimes the only thing that is going to be judged. And juries struggle for weeks sometimes to determine whether or not a witness is credible, and the judge always instructs the jury you may believe part of what a witness says, you may believe one thing a witness says, you are free to weigh and balance that credibility however you want. And you look at the tools that juries use: corroboration, physical evidence, bias. Bias is incredibly important when you are determining credibility.

So what tools are used in this analysis to determine whether or not somebody is telling the truth or not?

Mr. TING. Of all the information, you have to determine whether there is anything that raises a question, any red flags, and as soon as you have one lead, if you will, you continue to pursue that and see if you get others. And once you challenge their credibility, as far as I am concerned, then you lean toward an unfavorable decision. Now, in the case of asylum with CIS, that is simply referring them to the immigration judge. So there could be two different standards there being applied.

Mr. GOWDY. Well, Chaffetz had a hearing on Oversight, and I asked a witness—I cannot recall his name, but he was somebody who works for the Government that is in enforcement—that the fact that you lie on one part of your petition or application should not be considered as any evidence of veracity or lack thereof on another part, which I just find to be mind-boggling that you can pick and choose which questions you are going to answer truthfully and which ones you are not.

But leaving the detect and deter for a second, I want to get to the punishment. What are the consequences for falsely asserting an asylum claim?

Mr. TING. Well, you are charged with fraud and misrepresentation, and then you are removable.

Mr. GOWDY. Are those prosecuted with vigor?

Mr. CROCETTI. Well, I would have to defer to ICE or the Department.

Mr. GOWDY. But you have been around a long time. Despite your youthful appearance, you have been around a long time. So my question is, if there is no disincentive to asserting a claim, if you are not going to be prosecuted for making a false claim or for fraud, where is the disincentive to doing it?

Mr. CROCETTI. Well, one of my frustrations throughout my career is the fact that whenever there is a ground of inadmissibility, there seems to always be an exception or a waiver available. And as provided in my testimony, I think we need to think differently and approach things a little bit differently. Maybe requiring one to be outside the country for a couple years is not quite the hardship that we have made it over the years. And until we start really getting serious and holding people accountable for their representation, we are going to continue to encourage fraud because the fraudsters, if you will, know there is a mechanism to get a waiver or an exception or whatever.

Ms. ACER. Mr. Chairman, can—I am sorry.

Mr. GOWDY. Well, I am out of time. In fact, I am woefully out of time. So I am just going to say this in conclusion.

Ms. LOFGREN. I ask unanimous consent to give you another minute so she——

Mr. GOWDY. Yes, but that is only so she can answer. You do not really want to give me another minute. I am happy because of her generosity. I am happy for you to answer the question if you want.

I would also like you to answer this one other question, because I do not know it, while you are answering that one.

If you abscond while you are on bond, does that impact your credibility in a subsequent proceeding?

Ms. ACER. Let me just jump in first to just reiterate again that fraud hurts everyone, including bona fide asylum seekers, and we really do need to make sure that whatever measures we look at are actually tailored to deal with fraud and do not block innocent individuals.

I want to go back to your prosecution point, which I think is an important one. There have been, I think, stepped-up prosecutions in recent years and some really major ones which send a very strong signal. They are not just dealing with things in the past. It sends a signal in the future that fraud will not be tolerated. So I want to agree that those who perpetrate fraud absolutely need to be dealt with.

I want to go back to this impression that the asylum system is somehow really easy. It is actually really difficult for people who are in the system and people who are bona fide refugees who go on to be granted. It is a hard system for them. So I just want to add that one point in as well.

Oh, on the bond question. Sorry. So for individuals who do not comply with bond, there can be a range of consequences. I mean, the most important thing is that they actually are re-detained if they have not complied with bond——

Mr. GOWDY. I know. I am asking whether it impacts your credibility.

Ms. ACER. I am sorry. I was in the middle of saying that. Sorry, sir.

Yes, indeed, it could potentially impact your credibility, anything. If you said you are going to show up and you do not can impact your credibility potentially.

Mr. GOWDY. Well, on an almost note of accord, we will end with me simply making this observation. I am convinced that everybody at this panel and frankly everyone on this dais would move heaven and earth to help someone who is legitimately making a claim for asylum. I am convinced of that. And those who behaved and remained in the hearing room, I am convinced of that as well.

But I have got to stress—at least in my district—I cannot tell you about the rest of the country—what will undercut people's generosity of spirit quicker than anything else is fraud. And not only is it going to impact the fraudster, it is going to impact people making legitimate claims if we do not do something to get that number down as low as we can.

So with that, on behalf of all of us, thank you for your time, your expertise, your collegiality with one another and with the members of the panel.

Ms. LOFGREN. Could I ask unanimous consent to place in the record a statement from the United We Dream Network?*****

Mr. GOWDY. Without objection.

Ms. LOFGREN. Thank you.

Mr. GOWDY. This concludes today's hearing. Thanks to all of our witnesses for attending.

Without objection, all Members will have 5 legislative days to submit additional questions for the witnesses or additional materials for the record.

The hearing is adjourned.

[Whereupon, at 12:09 p.m., the Subcommittee was adjourned.]

*****See Appendix for this submission.

APPENDIX

Material Submitted for the Hearing Record

Material submitted by the Honorable Trey Gowdy, a Representative in Congress from the State of South Carolina, and Chairman, Subcommittee on Immigration and Border Security

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

National Security and Records Verification Directorate

Fraud Detection and National Security Division

I-589 Asylum Benefit Fraud and Compliance Assessment Report

November 16, 2009

--- FOR INTERNAL DISCUSSION ONLY ---

Executive Summary

The U.S. Asylum Program provides the opportunity for applicants who meet the definition of a refugee[1] and have arrived in the United States or traveled to a U.S. port of entry, to apply for legal status to remain in the U.S. Because applicants for asylum may have difficulty fleeing with or retrieving documentary evidence, credible testimony alone may be sufficient evidence to establish eligibility. Some argue that the rules regarding submission of corroborating evidence may open the Asylum Program to increased fraudulent filings. To help address this concern, USCIS conducted a Benefit Fraud and Compliance Assessment (BFCA) to study the scope and types of fraud associated with the Form I-589, *Application for Asylum and Withholding of Removal,* to determine the relative utility of a number of fraud detection methods, and to assess the extent to which the fraud detection measures that were part of the adjudication process at the time of adjudication were being utilized by Asylum Officers (AOs).

USCIS studied a sample of asylum applications that were affirmatively filed[2] between May 1, and October 31, 2005. All cases included in this BFCA were subject to a set of fraud detection methods, including verifying information in the applicant's file against several other U.S. and Canadian government systems.[3] In some cases where information or documents were suspected to be fraudulent, documents and/or facts from the case were sent overseas to U.S. government officials to verify authenticity (referred to as "Overseas Verification Requests" or "OVRs").

For the purposes of the BFCA, a case was classified as fraudulent (labeled "proven fraud") if reliable evidence pertaining to the applicant's asylum eligibility proved a material misrepresentation and the evidence was more than contradictory testimony given by the applicant.[4] If indicators of fraud existed and pertained to the applicant's asylum eligibility, but fraud could not be confirmed by evidence external to the applicant's testimony, the case was classified as exhibiting "indicators of possible fraud." The cases that did not present any indicators of fraud were classified as not fraudulent (labeled "no fraud").

Because USCIS did not receive responses back on all of the OVRs sent in connection with this study, USCIS had to complete its analysis with some missing data. As a result, this study can neither provide a definite estimate of fraud in the asylum program, nor

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[1] The term "refugee" means any person who is outside any country of such person's nationality or, if in the case of a person having no nationality is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. INA Section 101(a)(42).

[2] The definition of affirmatively filed applications, Infra at note 6.

[3] Canadian checks were performed on all but eleven cases which lacked fingerprints. Fingerprints are required to run the Canadian system checks.

[4] The definition of fraud is discussed in greater detail in Section 1, "Background."

report a margin of error. Rather, this report presents a detected fraud rate, indicating that if FDNS had additional fraud detection tools or received responses to all of the overseas document verification requests, the rate of proven fraud might be higher. The detected fraud rate in the asylum program for the population from which the sample was drawn is 12%.[5] The true fraud rate is unknown, and "fraud rate" in this report refers to the rate of "detectable" fraud. This includes fraud detected through systems checks, admissions of fraud, and/or overseas document verification.

In 12 of the proven fraud cases, asylum had been granted prior to the BFCA. In these cases, the BFCA yielded information that would not have been obtained in the normal course of the adjudications under procedures in place at the time that the cases were completed. For each of these 12 cases, the Asylum Program initiated terminations proceedings based on the results of the study. The identification of proven fraud cases through the application of the additional fraud detection methods used in the BFCA demonstrates the value of those fraud detection tools.

Among the cases determined by this review to be proven fraud, there were no instances where an asylum office granted a case and failed to properly complete the mandatory background and security check procedures in place at the time of the adjudication. In all cases, AOs completed security checks and correctly recorded results in accordance with Asylum Program requirements. As one objective of the BFCA to assess the extent to which fraud detection measures were part of the adjudication, these results indicate that the Asylum Program employed required fraud detection measures to the fullest extent possible in each of these adjudications.

In this study, the majority of the cases, 58% (138/239), exhibited indicators of possible fraud, and 30% (72/239) of cases contained no fraud. Of the cases with indicators of possible fraud, 76% (105/138) were referred to an Immigration Judge independent of the BFCA. The high rate of referral of these cases indicate that current techniques and procedures that the Asylum Program utilizes in adjudicating cases are reasonably effective in dealing with cases that contain indicators of fraud.

Each of the fraud detection methods utilized in this BFCA confirmed a finding of proven fraud in at least one case. Overseas document verification was the most successful method employed because it provided definitive evidence of fraud for the largest number of proven fraud cases (17 out of 29). U.S. Government system checks yielded evidence of fraud in seven (7/29) proven fraud cases; Canadian immigration system checks supported findings in three (3/29) cases; and commercial data broker checks provided the evidence in one (1/29) case. In addition, there was one (1/29) case in which the applicant's admission of fraud pursuant to an ICE investigation led to a finding of proven fraud, demonstrating the valuable role that ICE can play in pursuing cases where fraud is suspected.

[5] The margin of error for this point estimate would have been ±4.1% if the entire sample had been subjected to overseas verification requests.

As a result of this study, USCIS intends to publish internal recommendations to aid the asylum adjudication processes.

Table of Contents:

1. Background

USCIS conducted this BFCA for three purposes. The first and primary purpose was to conduct a study on the scope and types of fraud associated with the Form I-589, *Application for Asylum and Withholding of Removal.* The second purpose was to determine the relative utility of a number of fraud detection methods. The third purpose was to assess the extent to which the fraud detection measures that were part of the adjudication process at the time of adjudication were being utilized by Asylum Officers (AOs).

For the purposes of the BFCA, fraud is defined as a willful misrepresentation or falsification of a material fact. Fraud entails any manifestations that amount to an assertion not in accordance with the facts, an untrue statement or concealment of a material fact, or an incorrect or false representation material to asylum eligibility.

This document describes the methodology used to measure fraud within the Asylum Program and the results of the application of those methods. This section provides an overview of the history of the BFCA program and a description of the U.S. Asylum Program. The next two sections describe the BFCA program and provide an overview of the Asylum Program and the skills and resources Asylum Officers and FDNS Immigration Officers use to identify fraud. The section entitled "Study Population" explains the sample population and how it was identified. The "Methodology" section describes the methods that FDNS Immigration Officers used to identify fraud within the sample population applications and how cases were ultimately classified for purposes of this study. The overall fraud rate, overseas verification results, and the effectiveness of fraud detection methods are discussed in the "Key Findings and Analysis" section. The "Actions Taken Since the BFCA" section describes steps taken since the time of the study to enhance the integrity of the Asylum Program.

A. The BFCA Program

The Government Accountability Office (GAO) Report 02-66, entitled *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems,* issued on January 31, 2002, found that the United States' legal immigration system was being abused and potentially used to threaten national security, public safety, and commit other illegal activities, such as human and narcotics trafficking. The GAO Report indicated that legacy INS needed to: 1) implement a sound anti-fraud benefit strategy, 2) designate detection of immigration benefit fraud as a priority initiative, and 3) create a mechanism to collect and report data to identify the volume and scope of immigration benefit fraud that exists.

In May 2004, U.S. Citizenship and Immigration Services (USCIS) responded to the concerns raised in the GAO report and national security and public safety needs by creating the Office of Fraud Detection and National Security (FDNS) as the foundation upon which to build its fraud detection and prevention effort. In February 2005, FDNS

developed and implemented a Benefit Fraud Assessment (BFA) program, later renamed the Benefit Fraud and Compliance Assessment (BFCA) program, to measure the integrity of specific nonimmigrant and immigrant applications and petitions by conducting administrative inquiries on randomly selected cases. Although the name of the program has changed to reflect the full range of issues reviewed, the methodology used to conduct the assessments has not changed. The applications and petitions reviewed are not selected because they are suspected of fraud, but are a sampling of pending and completed cases over a recent six-month period. The results of the BFCA serve as a basis for proposed changes to existing regulations, policies, and procedures, and as warranted, recommended legislative remedies.

While conducting these assessments, FDNS analyzes the scope of an immigration program for fraud vulnerabilities. Information gleaned from a BFCA may aid USCIS in further developing fraud detection and prevention strategies, establish priorities for workload planning purposes, and inform fraud pattern and linkage data for case referral to Immigration and Customs Enforcement (ICE) or closer examination by adjudicating officers.

In keeping with the USCIS/ICE anti-fraud joint strategy,[6] USCIS may refer some or all of the BFCA cases with preliminary findings of fraud to ICE for criminal investigation, possible prosecution, and removal, if warranted. In addition, the USCIS component with authority over the adjudication process is informed of all findings of fraud so that the component can take appropriate administrative actions on the specific case findings such as denial, referral, revocation, and/or termination of benefits. All BFCA cases are entered into the FDNS Data System (FDNS-DS) for tracking and case management purposes. Suspected fraud disclosed during a BFCA is entered into FDNS-DS as either a lead or case and is accessible by FDNS officers and ICE agents conducting administrative and criminal investigations.

B. The U.S. Asylum Program

Asylum is a government-granted form of protection provided to foreign nationals who were persecuted or have a well-founded fear of persecution in their country on account of their race, religion, nationality, membership in a particular social group, or political opinion. The U.S. Asylum Program provides this status to qualified applicants who have already entered the United States or are seeking entry to the U.S. at a port of entry.

In an affirmative asylum adjudication, the applicant generally has the burden of proving that he or she: 1) is eligible to apply for asylum status, 2) is a refugee within the meaning of section 101(a)(42)[7] of the Immigration and Nationality Act (INA), 3) is not statutorily barred from a grant of asylum, and 4) merits asylum as a matter of discretion.[8] To fulfill

[6] See Attached Memorandum of Understanding with Immigration and Customs Enforcement dated September 2008.
[7] Definition of Refugee, Supra, at 1.
[8] Every grant of asylum to an individual who establishes refugee status is discretionary. If it is determined that an applicant is eligible for asylum, there must also be a determination that an applicant merits a

this burden, the applicant must present testimony that is credible, persuasive, and specific. The applicant may also furnish documentary evidence; however, due to the emergent circumstances that may be associated with refugee flight, asylum applicants are not required to submit corroborating documentation when such items cannot be reasonably obtained. For these reasons, section 208(b)(1)(B)(ii) of the INA states that credible testimony alone may be sufficient to establish asylum eligibility.

Although documentary evidence is not required, in the majority of asylum cases, applicants submit documents to prove their identity and/or meet their evidentiary burden to establish asylum eligibility. For example, they may submit passports and national identity documents to establish identity. Examples of evidence submitted to support the asylum claim include documents issued by law enforcement authorities, medical facilities, employers, political and religious organizations, and other civil authorities, as well as country condition information relevant to their claim for protection.

An asylum applicant's use of a fraudulent document does not necessarily constitute fraud in the overall asylum claim and might not affect his or her eligibility for asylum status. For example, an applicant may obtain a fraudulent travel document to flee the country of feared persecution and travel to the United States. If the applicant discloses to the Asylum Officer that the document is fraudulent and provides a plausible explanation for using it, his or her use of the fraudulent document may ultimately support the claim rather than adversely impact eligibility. Thus, the facts and circumstances of each asylum case must be considered in the determination of whether fraud is material to an asylum claim. All FDNS Immigration Officers (IOs) and Asylum Officers (AOs) are trained to analyze documents to determine whether a document exhibits indicators that it is counterfeit, altered, or was issued to an individual other than the individual presenting the document. In addition, passports, national ID cards, and other commonly issued documents may be sent to the Immigration and Customs Enforcement Forensic Document Laboratory (ICE FDL) for analysis and a determination regarding authenticity. While these resources have helped the Asylum Program to more effectively identify and address document fraud, asylum applicants may present a wide range of official, semi-official, and/or unofficial documents from overseas locations, making document fraud determinations an ongoing challenge.

AOs are required to conduct an analysis of credibility and make a credibility determination in each case that they adjudicate. In doing so, AOs consider such factors as: 1) the accuracy, truthfulness, and consistency of the statements provided between and within the oral and written testimony, 2) the sufficiency of detail provided by the applicant, 3) the inherent plausibility of the facts alleged by the applicant, and 4) the demeanor, candor, and responsiveness of the applicant. A negative credibility finding alone, however, does not necessarily demonstrate asylum fraud; it may reflect the

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favorable exercise of discretion. 8 C.F.R. Section 208.14(b) indicates that an asylum officer may grant, in the exercise of his or her discretion, asylum to an applicant who qualifies as a refugee under INA Section 101(a)(42).

applicant's inability to provide sufficiently credible testimony to meet his or her burden of proof.

2. The Study Population:

The population from which the data was drawn for this study included asylum applications that were filed between May 1, and October 31, 2005, and that received final adjudication or were still pending as of January 2006. The study was also limited to asylum applications within the jurisdiction of USCIS that were filed affirmatively[9] at USCIS Service Centers or directly with Asylum Offices. The Asylum BFCA did not include asylum applications filed defensively with the Department of Justice, Executive Office for Immigration Review (EOIR). This population totaled 8,555 asylum applications. The sample size of 239 applications was selected for the purpose of estimating the overall detectable fraud rate with a 95% confidence interval, an intended margin of error of ±5%, and assuming a 20% rate of occurrence.[10] The 239 applications in the BFCA were randomly pulled from the Refugee, Asylum, and Parole System (RAPS) database regardless of Asylum Office jurisdiction or any other demographic stratification. The principal applicants of the 239 BFCA cases represented applicants from over 50 nationalities. The countries of nationality that had the highest representation were China (55 applicants), Haiti (21 applicants), Colombia (21 applicants), and Mexico (14 applicants).

3. Methodology:

Fraud Detection and National Security Immigration Officers (FDNS IOs) located in each of the eight Asylum Offices conducted the first stage of this study. FDNS IOs performed a standard battery of system checks on every case. FDNS IOs reviewed all material in the applicants' A-files, T-files, working files, and related electronic case management records.

Once system checks and a review of the file were completed and no documents were identified as warranting overseas verification, a final determination was made. In many

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[9] An alien seeking asylum in the Unites States can apply either affirmatively or defensively, depending on his or her circumstances. When filing affirmatively, an asylum-seeker files Form I-589, *Application for Asylum and Withholding of Removal*, with the appropriate USCIS Service Center or Asylum Office within one year of his or her last arrival in the United States (unless an exception to the one-year rule applies). An asylum-seeker files defensively in Immigration Court before an Immigration Judge (IJ) by filing Form I-589, *Application for Asylum and Withholding of Removal*, as a defense against removal from the United States. An asylum-seeker who does not establish eligibility for asylum affirmatively will, if not in a legal immigration status, be referred to Immigration Court where he or she can again apply to establish eligibility for asylum before an IJ.

[10] This random sampling formula was provided and approved by the DHS Office of Immigration Statistics (OIS). Because there were no estimates of fraud available within the asylum population from previous studies, OIS recommended a simple random sample of cases for this study. The sample design used in this study is similar to that used in other BFCAs.

cases, if information or documents were suspected to be fraudulent and it was believed that consultation with overseas sources could confirm or refute the suspicion, an overseas verification request was submitted. Once the overseas verification request was returned, a final determination was made. After the FDNS IOs conducted their reviews and analyses, Headquarters staff conducted the second stage reviews of each determination to ensure that the primary determinations were consistent among FDNS IOs in all field asylum offices. For cases in which no OVR response was received, a determination was made based on available information.

A. System Checks

FDNS IOs conducted government system and commercial data broker checks on all subjects in the BFCA, including applicants, dependents, interpreters, preparers, and representatives.[11] These checks were conducted to identify possible fraud indicators associated with information contained in the asylum application. These checks included an up-to-date inquiry of all government systems that are required in the adjudication of an asylum case, as well as additional systems that were not required at the time of adjudication. FDNS IOs then reviewed the system checks to determine whether the records they found were consistent with the information that the applicant provided during the asylum adjudication.

The Asylum Division may exchange information with Canada on individual asylum cases to confirm elements of asylum eligibility. As part of this study, biometrics of the BFCA principal applicants[12] and their dependents were checked against Canadian immigration systems to determine whether the subjects previously applied for refugee status in Canada. In cases where a search of these databases yielded a biometric match, the specific case information obtained was used to verify the credibility of the applicant's testimony in support of his or her U.S. asylum claim.

B. Overseas Document Verification

After conducting the systems checks and file review described above, FDNS IOs could request overseas verification of the authenticity of the supporting documents or facts claimed by applicants. Because of the time and resource requirements of overseas verification, cases were sent when there were specific reasons to believe that there would be relevant information obtained overseas and there was insufficient evidence to otherwise substantiate a fraud finding.
OVRs were submitted in 59 of the 239 BFCA cases. The documents that were submitted for overseas verification were sent to the USCIS Office of International Operations

[11] Interpreters and preparers were checked against Central Index System and to Commercial Databases (CDBs). If there was adverse information found about an interpreter or preparer from another source (for example, an interpreter being on an office's "banned interpreter list"), that information was noted by the FDNS IO. Attorneys/representatives were checked against RAPS, DHS/DOJ records regarding disbarred or disciplined attorneys, and state bar and/or consumer protection bureau records.
[12] Eleven applicants did not receive the Canadian check due to the unavailability of fingerprints required to run the check.

whenever possible. In countries that lacked a USCIS presence, the documents were sent to the U.S. Department of State, Bureau of Democracy, Human Rights and Labor.

C. Definitions of Fraud Categories: After review of all information obtained through systems checks, file review, and OVRs, the FDNS IO determined whether the case exhibited ***proven fraud, indicators of possible fraud, or no fraud.***

(i) Proven Fraud: A case was determined to contain proven fraud when a fraud indicator material to asylum eligibility was confirmed by reliable evidence external to the applicant's testimony and could be clearly articulated in the written explanation of the BFCA case findings.

(ii) Indicators of Possible Fraud: A case was determined to contain indicators of possible fraud when indicators of fraud material to asylum eligibility were present (e.g., material inconsistencies between testimony and written statements) but could not be confirmed by sufficient reliable evidence external to the applicant's testimony. This category included cases where there was a pre-identified pattern of claim subject to internal monitoring.[13] It also included cases where no substantiated external fraud indicators were found, but an immigration service provider (preparer, interpreter, and/or attorney/representative) associated with the case was convicted of immigration fraud or was currently under investigation for immigration fraud. An AO's negative credibility determination, for this study's purpose, was treated as an indicator of possible fraud because the determination was based upon a material inconsistency in the testimony or associated with a lack of accuracy or truthfulness in the statements provided.

(iii) No Fraud Indicators: A case was determined to be in this category when it exhibited no indicators of fraud material to asylum eligibility.[14]

For cases determined to exhibit proven fraud or indicators of possible fraud, FDNS IOs also reviewed the case to determine whether the Asylum Officer identified the fraud indicator when adjudicating the case.

4. Key Findings:

The results of the BFCA yielded a detected fraud rate of 12%[15] (29/239).[16] This includes fraud detected through systems checks, admissions of fraud, and overseas document

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[13] Further information regarding fraud patterns subject to monitoring, Infra at 18.

[14] Other types of fraud or system abuse/misuse may have been identified, but the focus of the BFCA was to identify asylum fraud indicators and determine the extent of asylum fraud in the sample population. Examples of non-asylum system abuse include fraud related to social security, family-based petitions, and jurisdiction (i.e. misrepresenting an address to file in one asylum office over another).

[15] The margin of error for this point estimate would have been ±4.1% if the entire sample had been subjected to overseas verification requests.

[16] For a more complete understanding, 12% should be thought of in two parts: 5% (±2.8%) is the fraud rate detected through system checks and admission of fraud. The other portion of the detectable fraud rate is the fraud detected by overseas verification, which is at least 7%.

verification. Additionally, 30% (72/239) of cases contained no fraud. Finally, recognizing the unique nature of asylum claims as particularly dependent on the applicant's testimony alone and the limitations of the government's ability to independently verify the unique facts of the claim, the methodology included an intermediate category, "indicators of possible fraud," to capture those cases where USCIS identified indicators of possible fraud that could not be independently verified. In this study, 58% (138/239) of cases exhibited indicators of possible fraud. Of the cases in the study that were found to have proven fraud or indicators of possible fraud, 72% (121/167) were referred to an Immigration Judge independent of the BFCA.

The results of the study are limited due to lack of response to 33 overseas verification requests. Of the 239 applications in the sample, the analysis of 206 cases was based on all requested information.[17] The remaining 33 cases are those without a response to the OVR and were given a BFCA fraud classification based on the information available. Given that limitation, this study provides a detectable fraud rate with the understanding that additional information on 33 cases would likely yield a higher detected fraud rate. Assessing the information available for these 33 cases, 6 were determined to have no fraud, and 27 were determined to have indicators of possible fraud. While the 6 cases with no fraud were found by FDNS IOs to warrant closer review of the documents submitted, upon further review, the evidence presented did not meet the standard for the final determination of *indicators of possible fraud.*

A. 12% (29/239) of Asylum Cases Found to be Proven Fraud:

A total of 29 out of 239 (12%) cases were classified as "proven fraud." The rate of proven fraud discovered in the sample through system checks and admission of fraud was 5% (12/239). Overseas verification proved fraud in 7% (17/239) of all cases. In 12 of the 29 proven fraud cases, or 5% (12/239) of the overall population, asylum had been granted prior to the BFCA. These 12 cases are significant because they represent instances in which applicants successfully perpetrated fraud and obtained the asylum benefit. In these cases, the BFCA yielded information that would not have been obtained in the normal adjudicative process under procedures in place at the time that the case was completed. For each of these 12 cases, the Asylum Program initiated terminations proceedings based on the results of this study. In 11 cases, asylum status was terminated. In the remaining case, severe medical conditions prevent the applicant from appearing before USCIS in termination proceedings. The identification of proven fraud cases through the application of the additional fraud detection methods used in the BFCA demonstrates the value of those fraud detection tools.

B. 58% (138/239) of Asylum Cases Contained Indicators of Possible Fraud:

FDNS concluded that there were 138 cases with indicators of possible fraud (111 cases that were completed based on all requested information and 27 of the 33 cases that did not receive an overseas verification result), meaning that 58% (138/239) of the study's cases exhibited indicators of possible fraud. Of these cases, 22% (30/138) were approved

[17] In 26 of the 206 cases the requested information included the results of an OVR.

prior to the completion of the BFCA and 78% (108/138) were referred to an immigration judge.[18]

There were 34 cases in which the indicator of possible fraud was, at least in part, a fact or document submitted by the applicant that the FDNS IO determined should be sent for overseas verification. In 7 of these 34 cases, USCIS received the response to the overseas verification request, but the results were insufficient to support a finding of proven fraud. The remaining 27 cases are those that did not receive an overseas verification response, and the fraud classification of "indicators of possible fraud" was based on all other evidence available, including consideration of the initial concerns that led to the document being sent overseas.

C. 30% (72/239) of Asylum Cases Contained No Fraud:

The remaining 30% (72/239) of the cases contained no fraud indicators. Cases in this category did not exhibit any indicators of fraud material to asylum eligibility. Out of the cases in this category, 42% (30/72) were approved and 58% (42/72) were referred or denied due to statutory ineligibility or discretionary factors.

See **Table 1** for the final adjudications on the sampled cases. Asylum was granted in 30% (72/239) of the cases and 70% (167/239) of the cases were referred or denied.

Table 1. Final Adjudicative Decisions and Fraud Classifications of Completed BFCA Asylum Cases

Final Adjudicative Decision	Proven Fraud Cases	Indicators of Possible Fraud	No Fraud	Total Cases
Approved	12 (5%)	30 (13%)	30 (13%)	72 (30%)
Not Approved‡	17 (7%)	108 (45%)	42 (18%)	167 (70%)
Total	**29 (12%)**	**138 (58%)**	**72 (30%)**	**239**

‡This category comprises both referrals to the Immigration Court and asylum denials.

5. Analysis of Proven Fraud Cases:

To assess the integrity methods implemented in the Asylum Program, this study analyzed whether the method by which the "proven fraud" had been identified was either: 1) a measure that was required at the time of adjudication but not properly applied by the adjudicating officer; 2) a measure that was not required at the time of adjudication but is now required; or 3) a measure that was not required at the time of adjudication and is not presently required in asylum adjudications.

[18] Denials are issued for applicants who maintain a legal immigration status at the time of the asylum decision. Applicants who are found not eligible for asylum and do not have a legal immigration status at the time of the decision are referred to the Immigration Judge.

In May 2006 and April 2007, ICE Office of Investigations announced the creation of multi-agency Document and Benefit Fraud Task Forces (DBFTF) in cities across the nation including: Atlanta, Baltimore, Boston, Chicago, Dallas, Denver, Detroit, Los Angeles, Miami, New York, Newark, Philadelphia, Phoenix, San Francisco, St. Paul, Tampa, and Washington, D.C. DBFTFs have been created in many cities that contain Asylum Offices, and in 2008 eleven indictments were served for asylum fraud investigation cases through DBFTF efforts.

8. Recommendations:

As a result of information gleaned from this study, FDNS plans to issue internal agency recommendations to improve USCIS processes and fraud detection.

9. Conclusion:

Given the nature of the asylum eligibility requirements, the burden is on USCIS to employ as many tools as possible to verify that applicants qualify for the benefit and are not fraudulently representing themselves. FDNS examined various aspects of the Asylum Program and relevant fraud vulnerabilities during the Asylum BFCA. Although no discernible fraud patterns were detected as a part of this study, valuable information was obtained as to information gathered in the adjudications process that could inform the adjudicator about the possibility of fraud occurring as part of the filing.

The tools used here, systems checks and overseas document verifications, were useful in detecting fraud. Each method has relative advantages and disadvantages. Systems checks provide critical information about an asylum applicant, including date of entry in the United States, whether the applicant applied anywhere else, and what information the applicant provided the Department of State to obtain a visa to the U.S., to name a few examples. Systems checks, particularly checks of CDBs, can be expensive to first implement, but then have low costs per unit. In addition, AOs can easily conduct these queries as part of the adjudication process. Overseas document verifications also provide critical information about an asylum applicant that in some cases cannot be obtained elsewhere.

Finally, for future studies it would be useful to obtain larger samples of cases for each office that would allow a rigorous analysis of the common characteristics that fraudulent applicants may possess in a given jurisdiction. While this study did not have a large enough sample for that scrutiny, this information would be helpful, for the Asylum Program and FDNS to identify other potential vulnerabilities and adjudicators to be aware of fraud patterns in the applicant pool.

APPENDIX

FOR OFFICIAL USE ONLY – LAW ENFORCEMENT SENSITIVE

MEMORANDUM OF AGREEMENT
BETWEEN USCIS AND ICE ON THE INVESTIGATION OF IMMIGRATION BENEFIT FRAUD

1. PARTIES. The parties to this Memorandum of Agreement (MOA) are U.S. Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS), two components of the Department of Homeland Security (DHS).

2. AUTHORITY. In section 2(I) of DHS Delegation Number 0150.1, Delegation to the Bureau of Citizenship and Immigration Services, and in section 2(I) of DHS Delegation Number 7030.2, Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement, USCIS and ICE received concurrent authority to investigate fraud involving immigration benefits available under the Immigration and Nationality Act (INA). In their respective delegations, USCIS and ICE were further directed by the Secretary of Homeland Security to coordinate the concurrent responsibilities provided under these Delegations. This MOA is being undertaken to advance the coordination between USCIS and ICE, as authorized by these Delegations.

3. PURPOSE. The purpose of this MOA is to set forth terms by which ICE and USCIS will work together to combat immigration benefit fraud. This MOA is limited in scope to the specific responsibilities described herein.

4. SUPERSESSION. This MOA supersedes the February 14, 2006 MOA of the same title.

5. POINTS OF CONTACT (POCs). The ICE POCs will be the Headquarters Identity and Benefit Fraud Unit (HQIBFU) and Public Safety and Human Rights Unit (PSHRU), the National Security Unit (NSU), the ICE Benefit Fraud Unit (BFU), Group Supervisors, and designated field IBF Units. The USCIS POCs will be the Headquarters Office of Fraud Detection and National Security (HQFDNS), Center Fraud Detection Units (FDU), and Field FDNS Operations.

A. Asylum Officers Correctly Followed All Established Security Check Procedures - *Integrity Standards Upheld*

Among the cases determined by this review to contain proven fraud, there were no instances where an AO granted a case and failed to properly complete the mandatory background and security check procedures in place at the time of the adjudication. In all cases, AOs completed security checks and correctly recorded results in accordance with Asylum Program requirements. One case was found to have "proven fraud" through a measure that was not required at the time of adjudication, but is required under present procedures. In the remaining "proven fraud" cases, the fraud was discovered using methods that were not mandatory at the time of adjudication and, though employed on a case-by-case basis today, are not required at the present time. In addition, through the repeated security checks performed for the BFCA, there was no case identified that involved national security concerns.

B. The Effectiveness of Each Fraud Discovery Method

In the majority of the proven fraud cases (17/29, or 59%), overseas document verifications provided the evidence supporting the finding. Each of the other fraud discovery methods identified fraud to some degree. In 24% (7/29) of proven fraud cases, U.S. Government system checks yielded evidence of fraud; Canadian immigration system checks supported findings in 10% (3/29) of the proven fraud cases[19]; and commercial data broker checks provided the evidence in one (4%) of the 29 proven fraud cases. In addition, the applicant's admission of fraud pursuant to an ICE investigation led to a finding of proven fraud in one case (4%).

(i) US Government Systems Checks Confirmed Fraud in 24% (7/29) of the Proven Fraud Cases:

INA section 208(d)(5)(A)(i) states that asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and the Secretary of State. Congress added this provision to ensure that all appropriate resources were checked to determine whether the applicant is ineligible for benefits and/or if there are any grounds on which the alien may be inadmissible to or removable from the United States. USCIS has instituted numerous mandatory biographical and biometric checks for all asylum applicants and has consistently employed newly available technologies to augment its security check procedures. The results of all security and background checks must be received and reviewed prior to a grant of asylum.

Additionally, as part of this BFCA, FDNS IOs utilized other non-mandatory systems checks to investigate fraud in the sample. Non-mandatory system checks that produced

[19] Because 11 cases did not receive Canadian checks due to a lack of fingerprints, it is possible that more fraud or indicators of proven fraud would have been discovered.

fraud information include: SEVIS, IBIS (SQVS),[20] IBIS (SQ94), IBIS (SQPQ), IBIS (SQAD), Accurint, (Commercial), Auto Track (Commercial), ADIS, and SC CLAIMS.

(a) DHS US-VISIT[21] (1/7 Cases Where U.S. Government Systems Checks Confirmed Proven Fraud):

US-VISIT provides information drawn from Customs and Border Protection (CBP) Form I-94, Arrival and Departure Records linked to biometric data. In 2004, CBP inspectors began capturing biometrics of non-immigrants arriving at certain airports and ports of entry in the US-VISIT database. Although exceptions do apply, one of the requirements to qualify for asylum status is that the individual applies within a year of his or her last arrival to the United States. Therefore, for the purposes of evaluating the applicant's eligibility and detecting asylum-related fraud, it is important to verify date of entry into the U.S. At the time of the BFCA, US-VISIT was not a mandatory system check; however that changed as of May 2006.

In one BFCA case, US-VISIT produced information that supported a finding of proven fraud. The check indicated an applicant's arrival to the U.S. in 2001; however, there were no departure data found in any other systems. The applicant testified in her asylum application that she entered without inspection in January 2005. In this case, the applicant's actual date of entry as recorded in US-VISIT predated the period when DHS began capturing non-immigrant arrivals into the system. FDNS accessed older I-94 records to confirm the earlier arrival, which was instrumental in yielding entry information and identifying the discrepancy regarding the applicant's claimed date of arrival. Through this case, US-VISIT which was not a required check at the time the case was adjudicated, was confirmed as an effective fraud detection method.

(b) Department of State (DOS) Consular Consolidated Database (CCD) (3/7 Cases Where U.S. Government Systems Checks Confirmed Proven Fraud):

In the BFCA, CCD was useful in detecting asylum-related fraud as it provided FDNS access to information from the DOS adjudication of visa applications. This allowed the IOs to compare the visa adjudication information with information provided in the asylum application and to address any apparent inconsistencies and other issues related to obtaining a visa. While misrepresentation to a State Department Consular Officer to obtain a visa to flee to the U.S. does not necessarily adversely affect asylum eligibility and may even support the applicant's asylum claim, it is nonetheless important for AOs to have that information, which equips them with the ability to determine whether this type of misrepresentation is material to asylum eligibility. Asylum Officers could not

[20] At the time of the BFCA, IBIS (SQ11) was the only required IBIS check prior to a grant of asylum.
[21] US-VISIT is the acronym for United States Visitor and Immigration Status Indicator. Note that prior to May 2006 it was mandatory for Asylum Officers to complete a biometric check against US-VISIT's predecessor system IDENT. That system provided checks against the Asylum biometric database, as well as databases for watchlist cases and recidivist immigration law violators. IDENT did not include entry information.

access CCD when they adjudicated the BFCA cases, and gained access to the system on October 6, 2006.

Information found in the DOS's CCD and in the applicant's DS-156 Non-Immigrant Visa Applications may help identify fraud indicators that warrant further research. For example, in two of the proven fraud cases, information in the visa application or CCD record yielded indicators of possible fraud and prompted the FDNS IO to request overseas verification of documents.

In one case that was adjudicated prior to October 2006 when AOs gained access to CCD, a record in the DOS's CCD yielded sufficient evidence to substantiate a proven fraud finding. The case involved an asylum applicant who claimed that the government was persecuting him for his work as a manager of an anti-government entertainment group and for his family's opposition activities. In contrast to his statements on his application, the CCD record indicated that the applicant is a close relative of a high ranking government official and that the applicant was employed as a translator with a company that serviced foreign embassies. This information is inconsistent with the applicant's testimony.

CCD's utility extends beyond its ability to substantiate fraud; it provides information that can corroborate a legitimate claim or flag issues in a case that indicate fraud. In one case, the BFCA yielded an initial finding of proven fraud, but the finding was later changed to a finding of no asylum fraud. The initial finding was based on inconsistencies between testimony presented during the asylum adjudication and information presented to DOS in connection with a visa application that was obtained through CCD. Although this case initially contained indicators of visa fraud, ultimately the applicant was able to address the inconsistencies through an interview and provide a credible explanation that resulted in a finding of no fraud.

(ii) Commercial Data Broker Checks Confirmed Fraud in 4% (1/29) of the Proven Fraud Cases:

Commercial Data Broker records (CDBs), including Choicepoint and LexisNexis, yield valuable information about the identity, residence, and time an individual has been in the United States. CDB checks are not currently mandatory identity/background checks and are only conducted when a suspicious indicator that is unique to the individual case or to a pattern of cases has already been identified.

CDBs helped to uncover inconsistent records that established proven fraud in one BFCA case. CDBs also helped to find information indicating possible fraud in another 6% of the sample cases. In the one proven fraud case, the applicant claimed on her asylum application and in her interview that she entered the United States without inspection in October 2004. The CDB record linked a variant of the applicant's name and her exact phone number and date of birth to an address history dating back to 2002, indicating that the applicant misrepresented her date and mode of entry into the United States to circumvent the one-year filing deadline. This case was adjudicated by an office where all

AOs did not have access to CDBs. The Asylum Program has promoted increased access to and usage of CDBs by both AOs and IOs in asylum adjudications.

(iii) Canadian Immigration Systems Checks Confirmed Fraud in 10% (3/29) of the Proven Fraud Cases:

Asylum-related information that Canada shares with the U.S may affect case determinations. In this BFCA, study information provided by the Canadian systems was sufficient to prove fraud in three cases. In one instance, an applicant entered the United States and filed an asylum claim based on sexual orientation. Canadian immigration systems checks revealed that the applicant previously claimed asylum in Canada based on persecution for political opinion and was denied. Because the information from Canada was gathered prior to the completion of the case, USCIS found the applicant ineligible for asylum based on the information that Canada supplied and referred the case to the immigration judge.

In another BFCA case, Canadian immigration records revealed that the applicant previously applied for asylum in Canada. Although the AO had information that the individual had traveled in Canada previously and had relatives residing there, he or she did not have the information regarding the applicant's claim in Canada. Following up on the results of the biometric check yielded the inconsistent information that led to a finding of proven fraud.

(iv) Overseas Document Verification Confirmed Fraud in 59% (17/29) of the Proven Fraud Cases:

While asylum applicants are not required to submit documentary evidence, many individuals submit travel and/or other civil documents to help establish their identity and to support certain aspects of their asylum claim. In this BFCA, most applicants provided documents at their asylum interview. Those documents included identity documents, political party membership cards, birth certificates, and hospital records.

The following are descriptions of the types of documents asylum applicants generally submit to support their claims:

- Law Enforcement Documents (arrest reports, imprisonment reports and any documents purported to have been issued by a government law enforcement entity);
- Medical Documents (medical reports and documents issued by medical establishments);
- Employment Documents (documents establishing an applicant's employment history);
- Political/ Religious Documents (documents issued by political and religious organizations that establish an applicant's affiliation with those organizations); and

- Identity/ Civil Documents (driver's licenses, marriage certificates, birth certificates or other documents issued by a civil authority to establish an applicant's identity and marital/family status).

Establishing asylum eligibility frequently involves determining if the documents submitted are authentic or fraudulent. Document fraud encompasses the counterfeiting, sale, and/or use of identity documents such as birth certificates, medical records, passports, and other documents used to obtain an immigration benefit. The knowing submission of a false document(s) as the foundation for a central element of an asylum claim may establish or serve as a factor to support an adverse credibility finding. Such fraud may call into question the reliability of other evidence submitted.

In many cases where documents were suspected to be fraudulent, the AO or IO submitted an overseas verification request. This process involves submitting the document to an overseas office of USCIS or DOS[22] to verify the authenticity of documents and/or other evidence submitted by an applicant. Depending on the information received, FDNS would include several document requests for the same case.

The BFCA required that requests for overseas verification be limited because of the scarcity of United States government agency overseas positions and resources. Accordingly, FDNS IOs identified 59 (25%, or 59/239) BFCA cases that were appropriate for submission of an overseas verification request. Twenty-six cases received overseas verification responses and 33 responses were not returned as of the issuance of this report. Of the documents submitted and responded to, 65% (17/26) were determined to be fraudulent. It is assumed that had more responses been received, more cases would be found to be proven fraud. Those documents that were discovered to be fraudulent as a result of overseas verification responses led to a proven fraud determination in at least 7% (17/239) of the BFCA sample.

The BFCA cases in which overseas verifications produced proven fraud findings illustrate how documents can be analyzed for fraud. In one case, the applicant was granted asylum based on past persecution and a well-founded fear of future persecution on account of her nationality[23] and due to ethnic discrimination in employment. Through overseas verification, USCIS determined that the applicant was employed with the same company for several years, and this employment contradicted the applicant's claims of work in another occupation. Overseas verification proved that her employment history was materially inconsistent with her asylum claim.

In another case, an applicant testified during his asylum interview that he was involved with a political opposition party. To support his claim, the applicant submitted two documents confirming his membership and activities in the party. FDNS IOs submitted

[22] For countries with USCIS presence, HQFDNS forwarded the document verification requests to USCIS HQ Office of International Operations. In countries with no USCIS presence, documents were forwarded to the Department of State, Bureau of Democracy, Human Rights, and Labor.
[23] In the context of the protected grounds contained in the refugee definition, "nationality" encompasses more than one's citizenship, referring also to the individual's ethnic origin and background.

these letters for overseas verification; both documents were found to be inconsistent with known exemplars, and ultimately proved fraudulent.

In a third case, the applicant was granted asylum based on past persecution and a well-founded fear of future persecution on account of her nationality. The applicant testified that, due to her ethnicity, she suffered severe discrimination in education and employment. USCIS discovered discrepancies regarding the applicant's educational level and employment history as listed on her visa application versus her asylum application, prompting an overseas verification request. Overseas verification consisted of an employment verification, and results confirmed that the applicant misrepresented her employment history in her asylum claim.

Another applicant testified that she suffered harm because of her political opinion. To corroborate her testimony, the applicant submitted a birth certificate and newspaper articles. FDNS IOs submitted these documents for overseas verification that resulted in a determination that they were fraudulent. In this case, the newspaper articles were found to be altered versions of original newspapers.

Thirty-eight documents that were sent for overseas verification were evaluated and responses were provided by the overseas post.[24] Of the documents that were verified, 66% (25/38) were determined to be fraudulent. 21% (8/38) of the returned documents were found to be genuine and 11% (4/38) of the documents were classified as suspected fraud.

See **Table 4** for a breakdown of the overseas verification responses by document type. This table does not illustrate the total number of cases for which overseas verification was requested and does not include the requests for which an overseas verification response was never received.

[24] Unverifiable documents include those that were sent overseas for verification, and the response received was that the document was unable to be conclusively verified as genuine or fraudulent.

Table 4. Overseas Document Verification Responses by Type

	Confirmed Fraud Documents	Suspected Fraud	Genuine Document	Unverifiable Document[25]	Type Submitted and Response Received (Total)
Law Enforcement Documents	8	0	0	0	8 (21%)
Medical Documents	7	0	3	0	10 (26%)
Employment Documents	4	2	0	1	7 (19%)
Political/Religious Documents	4	1	2	0	7 (19%)
Identity/Civil Documents	2	1	3	0	6 (16%)
Total # of Documents	**25 (66%)**	**4 (11%)**	**8 (21%)**	**1 (3%)**	**38 (100%)**

Despite its utility, there were several disadvantages with the overseas verification process. First, a significant percentage of the submitted requests were never returned. At the time this report was written, requests for 56% (33/59) of the cases were still pending with the overseas office in which they were initiated. The inability and/or failure to respond timely to the requests have hampered FDNS IOs' ability to make timely and complete final fraud determinations on the 33 cases. Second, the response time is inconsistent and often lengthy. The average response time for overseas verification requests was 127 days with a range from five days to 342 days. 23% (6/26) of the cases where a response was received took over 300 days to complete. Another important limitation with this method is that overseas verifications must be conducted with particular care in asylum cases due to the confidentiality provisions contained in 8 C.F.R. §208.6. These provisions safeguard information that, if released to third parties, could endanger the security of the applicants or others who remain in the country of origin, or give rise to a plausible protection claim where one did not exist previously.

(v) Admission of Fraud in the Course of ICE Investigation Confirmed Fraud in 4% (1/29) of the Proven Fraud Cases:

Cases were not excluded from this study if they were subject to special handling or ongoing fraud investigations by ICE. In one case, the basis of the proven fraud finding was the applicant's admission of asylum fraud to ICE that was obtained in the course of an ICE investigation. Though this is not a specific fraud detection method applied to all cases in the BFCA sample, this case demonstrates the valuable role that ICE can play in pursuing cases where fraud is suspected.

[25] Unverifiable documents include those that were sent overseas for verification, and the response received was that the document was unable to be conclusively verified as genuine or fraudulent.

C. *Analysis of the Data Revealed No Discernible Trends Across Several Variables*

The study population cases were analyzed to determine whether there was a relationship between identified proven fraud cases and the following independent variables: applicant's country of birth, gender, age, location of U.S. residence, port of entry, class of admission to the U.S., basis of asylum claim, time between when the applicant entered the U.S. and filed for asylum, interpreter used at the asylum interview, particular representative of the applicant, and the particular preparer of the asylum application, where not a representative. The assessment did not yield any discernable trends among the variables listed above when viewed on a nation-wide or sample-wide basis. The study population dispersed among all of the asylum offices and there was an insufficient number of cases from each office from which to draw any valid conclusions on individual office trends.

6. *Indicators of Possible Fraud Analysis*[26]

The majority of the cases in this study, 58% (138/239), were classified as exhibiting indicators of possible fraud as described below. Of these cases with indicators of possible fraud, 76% (105/138) were referred to an Immigration Judge independent of the BFCA. Although these cases exhibited indicators of fraud that were material to asylum eligibility, such as inconsistencies between testimony and written statements, the indicators could not be confirmed by reliable evidence external to the applicant's testimony, which was a condition for classifying a case as proven fraud.

An asylum application may exhibit more than one indicator of possible fraud. A total of 153 indicators of possible fraud were identified in the sample and grouped into the five categories discussed below. The high rate of referral of these cases to the immigration judge indicates that current techniques and procedures that the Asylum Program utilizes in adjudicating cases are reasonably effective in dealing with cases that contain indicators of possible fraud.

A. AOs Referred to the Immigration Courts 54% (75/138) of the Cases Identified as Having Indicators of Possible Fraud Based on a Negative Credibility Determination.

The credibility of an applicant's testimony is fundamental to establishing asylum eligibility. In many cases, it is the determining factor because the applicant's own testimony may be the only evidence provided to establish the facts on which the asylum claim is based. Asylum regulations require that adverse decisions include a separate assessment of the applicant's credibility (8 C.F.R. § 208.19). The credibility determination is part of the agency decision and cannot be arbitrary or capricious; therefore, the AO must explain his or her reasoning fully. The basic framework for determining credibility is found at INA section 208(b)(1)(B)(iii). This section identifies a

[26] In some instances, a case contained more than one indicator of possible fraud.

number of different factors, such as demeanor and candor among other characteristics that an AO can take into consideration as part of the credibility determination.

Typically, testimony that is specific, detailed, and consistent will be considered credible. Adverse credibility determinations are warranted if the applicant's testimony is found to lack detail, to be inconsistent, contradictory, or implausible. The written credibility determination must detail what type of deficiencies the adjudicating officer found and reflect that the applicant was given an opportunity to respond to the deficiencies. The credibility determination must also explain how these deficiencies are relevant to the adjudication. The submission of fraudulent documents that are represented as authentic and are used to prove an element material to the claim also warrants an adverse credibility determination.

AOs receive specific training and guidance on general considerations in evaluating the credibility of an asylum applicant, specifically the factors upon which a credibility determination may be based, the factors upon which a credibility finding may not be based, and how to determine whether any non-credible aspects of a claim affect eligibility.

A negative credibility finding, however, is not necessarily sufficient to support a finding of proven fraud. AOs denied or referred to the immigration courts based on a negative credibility determination in 54% (75/138) of the cases identified as having indicators of possible fraud. While insufficient persuasive evidence was submitted to convince the asylum officers that the alleged facts were true in these cases, no reliable external evidence could be found to confirm that the alleged facts were false.

B. 10% (24/239) of Cases Contained a Pattern of Fraud Under Asylum Office/FDNS Monitoring.

Of the sampled cases, 10% (24/239), are part of an identified fraud pattern that has been monitored by the Asylum Office or FDNS for newly uncovered patterns of possible fraud. These cases are not yet under ICE investigation. Examples of this category include a number of suspicious cases submitted by one immigration service provider or an unusual pattern of asylum claims.

BFCA cases were included in this category only where there was sufficient information to consider the applicant as fitting the pattern of interest. It was not sufficient to place a case in this category where the immigration service provider was subject to monitoring but where the applicant's claim or other significant case characteristics did not fit the suspicious pattern.

C. 9% (22/239) of Cases Involved Individuals Under Investigation.

In 9% (22/239) of the cases, applications were associated with an individual under investigation. The cases in this category were also associated with immigration service providers that were under investigation. The cases exhibited specific characteristics that were common among a group of cases with a particular immigration service provider.

Fraudulent providers can be a major element in all areas of asylum fraud; such providers include attorneys, preparers, interpreters, and notaries. These cases were referred by FDNS to ICE for further investigation and possible criminal prosecution.

D. Other

In 3% (8/239) of the sample cases, indicators of fraud included material inconsistencies between testimony and/or supporting documentation, significant omissions from testimony and/or supporting documentation, or system checks produced information demonstrating suspected fraud.

7. Actions Taken since the BFCA

In the time since the BFCA cases were initially reviewed, the Asylum Program already has taken steps that further enhance the program's integrity, particularly with regard to increased systems checks against CCD and US-VISIT, as well as continued pursuit of additional information sharing agreements with other countries. The results of this BFCA validate the appropriateness of those additional procedural enhancements.

A. US Government Systems Checks:

The Department of State's CCD aided in the detection of fraud in this BFCA. This system was not available to AOs at the time the BFCA cases were adjudicated. Since November 1, 2006, the Asylum Division has required officers to conduct a CCD check for any case in which US-VISIT (an automated, required check) indicates an existing visa encounter.

B. Information Sharing with Other Countries:

The U.S. and Canada are authorized to share asylum-related information systematically and on a case-by-case basis with each other.[27] The Asylum Division now regularly exchanges information with Canada on individual asylum cases, when warranted, to confirm aspects of asylum eligibility. As part of the Asylum BFCA, biometrics of the BFCA principal applicants and their dependents were checked against Canadian immigration systems to determine whether the subjects had previously applied for refugee status in Canada. In cases where a search of these databases yielded a biometric match, the specific case information obtained was used to verify the credibility of the applicant's testimony in support of his or her U.S. asylum claim. In three instances in this study, Canadian records directly contradicted the asylum claim or conflicted with

[27] This exchange is authorized by *The Statement of Mutual Understanding (SMU) on Information Sharing between Citizenship and Immigration Canada, the U.S. Immigration and Naturalization Service, and the U.S. Department of State* (INF 4.1), along with its *Annex Regarding the Sharing of Information on Asylum and Refugee Status Claims.*

other information that the applicant provided the U.S government, thereby providing valuable information to the USCIS asylum application process.

The Asylum Division has completed information sharing pilot programs with the United Kingdom and Australia. The Asylum Division is expanding these efforts through its participation in the Biometrics and Technology Working Group of the Five Country Conference, and continues to explore the possibilities for information sharing with other countries in the future.

C. Overseas Document Verification:

The Asylum BFCA found that overseas verification of documents was the most instrumental tool in yielding evidence of substantiated fraud. That 29% (17/59) of cases sent for overseas verification resulted in a finding of proven fraud and 56% (33/59) of cases are still pending leads to the conclusion that USCIS could greatly benefit from an enhanced capability in this area as a component of a successful and effective asylum anti-fraud program. The Refugee, Asylum, and International Operations Division (RAIO) and FDNS have deployed FDNS personnel overseas. This will help USCIS complete more overseas document verification requests, and in a more expeditious manner. In April 2009, USCIS leadership published a memorandum providing interim guidance for overseas verification. Asylum verification requests must be redacted and channeled through FDNS IOs that track requests and route to appropriate offices for verification.

D. Additional Support for Investigation and Prosecution of Immigration Service Providers that Facilitate and Profit from Asylum Fraud

This study revealed that of the 29 proven fraud cases, only one was under investigation by ICE at the time of the review. The role of ICE was critical in that case, as it was the admission of fraud made by the applicant to ICE that served as the basis for the proven fraud finding. However, among the cases found to exhibit suspected fraud, 22 were linked to an immigration service provider or pattern that was under investigation by ICE, while 24 cases were subject to asylum office monitoring due to characteristics that linked the cases to a suspicious pattern. As a general rule, a single indicator of fraud based on a suspicious pattern or link to a provider believed to facilitate fraud is not sufficient to support a denial or referral. In such cases, a successful fraud prevention program requires coordination with Law Enforcement Agency (LEA) partners to investigate and dissolve the fraud ring by identifying and prosecuting its operators.

Experience has shown that task forces that combine USCIS, ICE, DOJ, and other government agencies' resources in undertaking large-scale investigations can be highly successful in prosecuting asylum fraud facilitators and deterring fraud in the future. For example, Operation Jakarta, a federal investigation overseen by the United States Attorney's Office for the Eastern District of Virginia, uncovered several related asylum fraud rings and led to 26 criminal indictments of immigration service providers. This initiative was possible due to a committed fraud task force.

In May 2006 and April 2007, ICE Office of Investigations announced the creation of multi-agency Document and Benefit Fraud Task Forces (DBFTF) in cities across the nation including: Atlanta, Baltimore, Boston, Chicago, Dallas, Denver, Detroit, Los Angeles, Miami, New York, Newark, Philadelphia, Phoenix, San Francisco, St. Paul, Tampa, and Washington, D.C. DBFTFs have been created in many cities that contain Asylum Offices, and in 2008 eleven indictments were served for asylum fraud investigation cases through DBFTF efforts.

8. Recommendations:

As a result of information gleaned from this study, FDNS plans to issue internal agency recommendations to improve USCIS processes and fraud detection.

9. Conclusion:

Given the nature of the asylum eligibility requirements, the burden is on USCIS to employ as many tools as possible to verify that applicants qualify for the benefit and are not fraudulently representing themselves. FDNS examined various aspects of the Asylum Program and relevant fraud vulnerabilities during the Asylum BFCA. Although no discernible fraud patterns were detected as a part of this study, valuable information was obtained as to information gathered in the adjudications process that could inform the adjudicator about the possibility of fraud occurring as part of the filing.

The tools used here, systems checks and overseas document verifications, were useful in detecting fraud. Each method has relative advantages and disadvantages. Systems checks provide critical information about an asylum applicant, including date of entry in the United States, whether the applicant applied anywhere else, and what information the applicant provided the Department of State to obtain a visa to the U.S., to name a few examples. Systems checks, particularly checks of CDBs, can be expensive to first implement, but then have low costs per unit. In addition, AOs can easily conduct these queries as part of the adjudication process. Overseas document verifications also provide critical information about an asylum applicant that in some cases cannot be obtained elsewhere.

Finally, for future studies it would be useful to obtain larger samples of cases for each office that would allow a rigorous analysis of the common characteristics that fraudulent applicants may possess in a given jurisdiction. While this study did not have a large enough sample for that scrutiny, this information would be helpful, for the Asylum Program and FDNS to identify other potential vulnerabilities and adjudicators to be aware of fraud patterns in the applicant pool.

Detained Asylum Seekers

Fiscal Year 2012 Report to Congress

November xx, 2013

Homeland Security

U.S. Immigration and Customs Enforcement

Message from the Acting Assistant Secretary

November xx, 2013

I am pleased to present the "Detained Asylum Seekers: Fiscal Year (FY) 2012 Report to Congress," prepared by U.S. Immigration and Customs Enforcement (ICE).

This report responds to the requirement contained in § 903 of the Haitian Refugee Immigration Fairness Act (HRIFA), Public Law 105–277, 1998 HR 4238.

Pursuant to our obligations in the HRIFA, I am transmitting a copy of this report to the following members of Congress:

The Honorable Patrick J. Leahy
Chairman, Senate Committee on the Judiciary

The Honorable Chuck Grassley
Ranking Member, Senate Committee on the Judiciary

The Honorable Charles E. Schumer
Chairman, Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security

The Honorable John Cornyn
Ranking Member, Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security

The Honorable Bob Goodlatte
Chairman, House Committee on the Judiciary

The Honorable John Conyers, Jr.
Ranking Member, House Committee on the Judiciary

The Honorable Trey Gowdy
Chairman, House Committee on the Judiciary, Subcommittee on Immigration and Border Security

The Honorable Zoe Lofgren
Ranking Member, House Committee on the Judiciary, Subcommittee on Immigration and Border Security

Inquiries about the content of this report should be directed to Jennifer Sheriff, ICE Enforcement and Removal Operations (ERO), Unit Chief, Statistical Tracking Unit, at (202) 732-6411.

Sincerely,

John R. Sandweg
Acting Assistant Secretary
U.S. Immigration and Customs Enforcement

Executive Summary

HRIFA § 903 requires the U.S. Department of Homeland Security (DHS) to regularly collect and present to Congress data on asylum applicants in detention. The enclosed report on detained asylum seekers covers FY 2012.

To fulfill this requirement, ERO used the ICE Integrated Decision Support reporting system.

Detained Asylum Seekers: Fiscal Year 2012
Report to Congress

Table of Contents

I. Legislative Language

This document responds to the legislative language set forth in HRIFA § 903, Collection of Data on Detained Asylum Seekers, which requires the Secretary of Homeland Security to regularly collect data with respect to asylum applicants in detention.[1] HRIFA § 903 specifically states:

> (a) IN GENERAL. – The Attorney General shall regularly collect data on a nation-wide basis with respect to asylum seekers in detention in the United States, including the following information:
>
> (1) The number of detainees.
>
> (2) An identification of the countries of origin of the detainees.
>
> (3) The percentage of each gender within the total number of detainees.
>
> (4) The number of detainees listed by each year of age of the detainees.
>
> (5) The location of each detainee by detention facility.
>
> (6) With respect to each facility where detainees are held, whether the facility is also used to detain criminals and whether any of the detainees are held in the same cells as criminals.
>
> (7) The number and frequency of the transfers of detainees between detention facilities.
>
> (8) The average length of detention and the number of detainees by category of the length of detention.
>
> (9) The rate of release from detention of detainees for each district of the Immigration and Naturalization Service.
>
> (10) A description of the disposition of cases.
>
> (b) ANNUAL REPORTS. – Beginning October 1, 1999, and not later than October 1 of each year thereafter, the Attorney General shall submit to the Committee on the Judiciary of each House of Congress a report setting forth the data collected under subsection (a) for the fiscal year ending September 30 of that year.
> (c) AVAILABILITY TO PUBLIC. – Copies of the data collected under subsection (a) shall be made available to members of the public upon request pursuant to such regulations as the Attorney General shall prescribe.

This report takes account of the detained asylum applicants who initially made a claim for asylum in FY 2012, including both principal applicants and any dependents. It also provides information on actions taken on the reported cases through September 30, 2012, the closing date of the period covered by this report.

The format of this report has been improved from previous versions. In ICE's effort to make the report more readable, wherever possible, the three detained asylum seeker categories were combined into one table for ease of viewing.

II. Background

Aliens present in the United States may apply for asylum affirmatively with U.S. Citizenship and Immigration Services (USCIS) or defensively before an immigration judge as relief from removal after being issued a Notice to Appear (NTA) or a Form I-863, Notice of Referral to Immigration Judge.[2] Aliens found to have a "credible fear"[3] of persecution or torture during expedited removal (ER) processing under § 235(b) of the Immigration and Nationality Act (INA) may apply for asylum before an immigration judge.[4] In addition, affirmative asylum applicants whose applications are not approved by USCIS are referred to an immigration judge for a *de novo* hearing in removal proceedings, unless the alien is maintaining lawful immigration status in the United States. Aliens subject to ER or who have been issued an NTA may be detained, but the custody considerations applicable to an individual asylum applicant vary based upon how the alien was processed and the specific facts of the alien's case.

In practice, only a very small number of affirmative asylum applicants are detained. On the other hand, many defensive applicants—and nearly all aliens who request asylum during ER processing—are detained for at least some portion of the processing of their immigration cases. Under INA § 235(b)(1)(B)(iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), custody is statutorily mandated for aliens subject to ER until the alien is found to have a credible fear of persecution or torture, after which ICE has discretion in determining whether to release the alien.

Detained aliens' asylum cases receive expedited consideration before the DOJ's Executive Office for Immigration Review (EOIR). Arriving aliens in removal proceedings may be paroled into the United States and released from custody by ICE under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5), but are not eligible to request bond redetermination hearings before EOIR. ICE's parole determinations for arriving aliens who are found during the ER process to have a credible fear of persecution or torture are made pursuant to a uniform policy directive issued in December 2009, which is available at http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf. Other aliens in removal proceedings in immigration court, or before the Board of Immigration Appeals are generally eligible to request bond redetermination hearings before EOIR, which are generally held within two to three days.[5]

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[2] Certain aliens—such as aliens admitted under the Visa Waiver Program, crewmembers, and stowaways—are not placed into removal proceedings, but rather are placed into "asylum-only" proceedings before an immigration judge through the issuance of an I-863.

[3] The INA defines "credible fear of persecution" as "... a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum." INA § 235(b)(1)(B)(v); 8 U.S.C. § 1225(b)(1)(B)(v).

[4] Aliens found not to have a credible fear of persecution may appeal that finding before an immigration judge. The referral to an immigration judge is to review the credible fear determination only, not to address removability or inadmissibility grounds.

[5] *But see* INA § 236(c) (mandatory detention provisions for certain criminal and other dangerous aliens) and 8 C.F.R. § 1003.19(h)(2)(i) (2011) (limiting EOIR jurisdiction to consider certain aliens for bond).

III. Origin of Data Sources

The statistics in this report were drawn from several different databases. Data regarding affirmative asylum applications is contained in the Refugee, Asylum, and Parole System, maintained by USCIS. Credible fear data is contained in the Asylum Pre-Screening System, maintained by USCIS. Defensive asylum data is currently contained in the Case Access System for EOIR, maintained by EOIR. Information from each of these databases was matched to information contained in the Enforcement Case Tracking System (ENFORCE) Integrated Database through the ENFORCE Alien Removal Module (EARM). EARM allows ICE personnel to effectively manage dockets and caseloads. The system is maintained by Electronic Data Systems, and the servers are housed at the Stennis Data Center in Gulfport, Mississippi.

ICE has replaced its detention and case management system [the Deportable Alien Control System (DACS)] with the deployment of the ENFORCE Alien Detention Module (EADM). In the first phase of this replacement, EADM replaced the detention functionality of DACS on September 30, 2007. The replacement of DACS was finalized on August 11, 2008, with the deployment of the EARM case management functions of DACS. These applications draw data from the ENFORCE Integrated Database (EID), providing improved reporting capabilities.

As in any record matching exercise, the possibility exists that records were not correctly matched across the systems. None of the systems contain biometric data. The only common field found throughout each system is the alien identification number.

When comparing the statistics in this report to the statistics in previous reports, it is important to note that the statistics were compiled using detention and outcome data at a different point in time each year. The average length of stay statistics and proportions in various outcome classes are not strictly comparable because elapsed time in a case has a significant impact on the status of the case.

IV. Summary of Findings

HRIFA § 903 imposes 10 reporting requirements, 9 of which are statistical. The complete detail for these requests is attached in the appendix as a series of statistical tables. The statistical report includes a statistical table for each numbered subparagraph of HRIFA § 903, except number 6 below, which does not require a detailed table.

The following are short summaries of the main findings for FY 2012:

1. FY 2012 asylum applicants by type (see Table 1):[6]
   (a) 114 of the 40,982 affirmative asylum applicants were detained;
   (b) 14,525 of the 15,341 credible fear asylum applicants were detained; and
   (c) 9,866 of the 12,472 defensive asylum applicants were detained;
2. FY 2012 detainees by country and asylum type (see Table 2):
   (a) the top three countries for detained affirmative asylum applicants are Mexico (49), the People's Republic of China (13), and Guatemala (11);
   (b) the top three countries for detained credible fear asylum applicants are El Salvador (4,408), Honduras (2,665), and Guatemala (2,253); and
   (c) the top three countries for detained defensive asylum applicants are Mexico (2,227), El Salvador (1,728), and Guatemala (1,229);
3. FY 2012 detainees by gender and asylum type (see Table 3):
   (a) males made up 83 percent of detained affirmative asylum applicants;
   (b) males made up 68 percent of detained credible fear asylum applicants; and
   (c) males made up 79 percent of detained defensive asylum applicants;
4. FY 2012 detainees by age and asylum type (see Table 4):
   (a) the average age for detained affirmative asylum applicants was 35;
   (b) the average age for detained credible fear asylum applicants was 27; and
   (c) the average age for detained defensive asylum applicants was 30;
5. FY 2012 detainees by state/the district of columbia/territory, detention facility, and asylum type (see Table 5):
   (a) California was the leading state for detention of affirmative asylum applicants (36);
   (b) Texas was the leading state for detention of credible fear asylum applicants (20,681); and
   (c) California was the leading state for detention of defensive asylum applicants (4,415);
6. For FY 2012, and with respect to each facility where detainees are held, whether the facility is also used to detain convicted criminals and whether any of the detainees are held in the same cells as convicted criminals:
   (a) although most ICE service processing centers, contract detention facilities, and inter-governmental service agreement facilities house both convicted criminal and non-criminal aliens, aliens are always housed based on ICE's detention standards

[6] Detained data are comparable to historically reported statistics; however, total asylum applicants by type that include non-detained data (not a requirement for this report) should not be compared to historical reports due to a new methodological review and improved reporting of this data this fiscal year.

and classification requirements (i.e., separated based on risk classification level); and

(b) accordingly, only non-criminals and low-risk, non-violent criminal aliens may be housed in the same cells with other non-criminal aliens. Further, ICE has contracted with some service providers and facilities to house only low-risk detainees, including asylum seekers (e.g., the Broward Transitional Center in Pompano Beach, Florida; the Elizabeth Contract Detention Facility in Elizabeth, New Jersey; and the Karnes Civil Detention Center in Karnes City, Texas) and families (e.g., the Berks Family Residential Facility in Leesport, Pennsylvania; and the T. Don Hutto Residential Center in Taylor, Texas);

7. FY 2012 detainees by frequency of transfers between detention facilities and asylum type (see Table 6):
   (a) 61 percent of detained affirmative asylum applicants were held in only one facility, and 81 percent were held in one or two facilities;
   (b) 35 percent of detained credible fear asylum applicants were held in only one facility, and 74 percent were held in one or two facilities; and
   (c) 67 percent of detained defensive asylum applicants were held in only one facility, and 87 percent were held in one or two facilities;
8. FY 2012 detainees by length of detention and asylum type[7] (see Table 7):
   (a) the average length of detention for affirmative asylum applicants was 77 days;
      i. 77 percent of all released affirmative asylum applicants spent 90 or fewer days in detention;
   (b) the average length of detention for credible fear asylum applicants was 74 days;
      i. 78 percent of all released credible fear asylum applicants spent 90 or fewer days in detention; and
   (c) the average length of detention for defensive asylum applicants was 87 days;
      i. 75 percent of all released defensive asylum applicants spent 90 or fewer days in detention;
9. FY 2012 detainees by disposition of cases and asylum type (see Table 9):
   (a) 16 percent (18 out of 114) of affirmative asylum applicants were detained and ultimately granted asylum/other relief;
   (b) 5 percent (741 out of 14,525) of aliens who met the credible fear screening standard were detained and ultimately granted asylum/other relief; and
   (c) 11 percent (1,049 out of 9,866) of defensive asylum applicants were detained and ultimately granted asylum/other relief.

[7] Average length of detention for each asylum category is calculated by dividing the total number of man-days that asylum seekers spent in detention by the total number of asylum seekers who spent any time in detention. The total number of asylum seekers includes both those who were released during the year and those who were still in custody at the end of the year. This number cannot be calculated using Table 7.

V. Appendix: FY 2012 Tables

Table 1: FY 2012 Asylum Applicants by Type[9]

Asylum Type	Non-Detained	Detained	Total
Total	*44,290*	*24,505*	*68,795*
Affirmative	40,868	114	*40,982*
Credible Fear	816	14,525	*15,341*
Defensive	2,606	9,866	*12,472*

Table 2: FY 2012 Detainees by Country and Asylum Type

Citizenship Country	Asylum Type			Total
	Affirmative	Credible Fear	Defensive	
Total	*114*	*14,525*	*9,866*	*24,505*
AFGHANISTAN	0	7	26	33
ALBANIA	1	21	42	64
ALGERIA	0	0	6	6
ANGOLA	1	2	3	6
ANGUILLA	0	0	1	1
ANTIGUA-BARBUDA	0	0	1	1
ARGENTINA	0	6	8	14
ARMENIA	0	9	16	25
ARUBA	0	0	1	1
AUSTRALIA	0	0	2	2
AZERBAIJAN	0	0	2	2
BAHAMAS	1	3	5	9
BANGLADESH	0	98	69	167
BARBADOS	0	0	1	1
BELARUS	0	0	6	6
BELGIUM	0	2	1	3
BELIZE	0	12	14	26
BHUTAN	0	0	1	1
BOLIVIA	0	6	7	13
BOSNIA-HERZEGOVINA	0	1	21	22
BOTSWANA	0	3	2	5
BRAZIL	1	42	50	93
BRUNEI	0	0	1	1
BULGARIA	0	4	5	9
BURKINA FASO	0	2	2	4
BURMA	0	3	13	16
BURUNDI	0	2	4	6
CAMBODIA	0	0	10	10
CAMEROON	1	62	52	115
CANADA	0	4	3	7
CAPE VERDE	0	0	1	1
CHILE	0	1	6	7
CHINA, PEOPLES REPUBLIC OF	13	780	756	1,549
COLOMBIA	1	108	85	194
CONGO	1	2	5	8
COSTA RICA	0	13	4	17
CROATIA	0	0	1	1
CUBA	0	1	49	50
CZECH REPUBLIC	0	0	2	2
CZECHOSLOVAKIA	0	0	2	2
DEM REP OF THE CONGO	0	1	10	11

Citizenship Country	Asylum Type			Total
	Affirmative	Credible Fear	Defensive	
DOMINICA	0	9	2	11
DOMINICAN REPUBLIC	1	214	114	329
ECUADOR	2	927	275	1,204
EGYPT	0	25	28	53
EL SALVADOR	4	4,408	1,728	6,140
ERITREA	0	112	102	214
ESTONIA	0	0	1	1
ETHIOPIA	1	63	70	134
FIJI	0	0	5	5
FRANCE	0	2	2	4
GABON	0	1	1	2
GAMBIA	0	7	10	17
GEORGIA	0	0	4	4
GERMANY	0	2	2	4
GHANA	0	27	35	62
GREECE	0	0	1	1
GRENADA	0	0	1	1
GUATEMALA	11	2,253	1,229	3,493
GUINEA	0	8	16	24
GUYANA	0	0	11	11
HAITI	2	132	117	251
HONDURAS	6	2,665	862	3,533
HONG KONG	0	0	1	1
HUNGARY	1	0	5	6
INDIA	0	479	338	817
INDONESIA	0	1	10	11
IRAN	1	8	43	52
IRAQ	2	7	36	45
ISRAEL	0	1	4	5
ITALY	0	0	3	3
IVORY COAST	1	4	10	15
JAMAICA	2	12	113	127
JAPAN	0	0	2	2
JORDAN	0	7	13	20
KAZAKHSTAN	1	0	2	3
KENYA	1	4	35	40
KOREA	0	0	7	7
KOSOVO	0	0	3	3
KUWAIT	0	0	2	2
KYRGYZSTAN	0	4	3	7

Citizenship Country	Asylum Type			Total
	Affirmative	Credible Fear	Defensive	
LIBERIA	0	4	29	33
LIBYA	0	0	2	2
LITHUANIA	0	1	6	7
MACEDONIA	0	0	1	1
MALAWI	0	0	1	1
MALAYSIA	0	0	5	5
MALI	1	1	7	9
MAURITANIA	0	2	2	4
MEXICO	49	829	2,227	3,105
MICRONESIA, FEDERATED STATES OF	0	0	2	2
MOLDOVA	0	2	10	12
MONGOLIA	0	1	10	11
MONTENEGRO	1	0	0	1
MOROCCO	0	3	8	11
MOZAMBIQUE	0	0	1	1
NAMIBIA	0	0	1	1
NEPAL	0	155	103	258
NETHERLANDS	0	0	1	1
NICARAGUA	0	195	103	298
NIGER	0	2	4	6
NIGERIA	1	43	78	122
NORTH KOREA	0	1	1	2
NORWAY	0	0	3	3
PAKISTAN	1	32	46	79
PANAMA	0	3	2	5
PARAGUAY	0	2	1	3
PERU	0	91	63	154
PHILIPPINES	0	2	22	24
POLAND	0	1	4	5
PORTUGAL	0	0	2	2
QATAR	0	0	1	1
ROMANIA	1	86	46	133
RUSSIA	0	13	32	45
RWANDA	0	13	11	24
SAUDI ARABIA	0	6	6	12
SENEGAL	0	5	10	15
SERBIA	0	1	3	4
SERBIA AND MONTENEGRO	0	2	0	2
SIERRA LEONE	0	2	14	16
SLOVAKIA	0	0	2	2

Citizenship Country	Asylum Type			Total
	Affirmative	Credible Fear	Defensive	
SOUTH KOREA	0	0	3	3
SOUTH SUDAN	0	0	9	9
SRI LANKA	2	169	53	224
ST. KITTS-NEVIS	0	1	0	1
ST. LUCIA	0	0	1	1
ST. VINCENT-GRENADINES	0	0	1	1
SUDAN	0	3	16	19
SURINAME	0	0	1	1
SWITZERLAND	0	1	0	1
SYRIA	0	47	27	74
TAIWAN	0	1	1	2
TAJIKISTAN	0	0	1	1
TANZANIA	0	2	5	7
THAILAND	0	2	9	11
TOGO	0	0	4	4
TONGA	0	0	1	1
TRINIDAD AND TOBAGO	0	2	15	17
TUNISIA	0	1	0	1
TURKEY	0	7	13	20
TURKMENISTAN	0	0	2	2
UGANDA	0	10	13	23
UKRAINE	1	4	26	31
UNITED ARAB EMIRATES	0	0	3	3
UNITED KINGDOM	0	0	2	2
UNKNOWN	0	19	3	22
URUGUAY	0	0	1	1
USSR	0	4	6	10
UZBEKISTAN	0	10	16	26
VENEZUELA	1	19	26	46
VIETNAM	0	3	24	27
YEMEN	0	2	4	6
YUGOSLAVIA	0	0	5	5
ZAMBIA	0	0	4	4
ZIMBABWE	0	0	3	3

Table 3: FY 2012 Detainees by Gender and Asylum Type

Gender	Asylum Type						Total	
	Affirmative		Credible Fear		Defensive			
	# Detained	%Detained	# Detained	%Detained	# Detained	%Detained	# Detained	%Detained
Total	*114*	*100.00%*	*14,525*	*100.00%*	*9,866*	*100.00%*	*24,505*	*100.00%*
Female	19	16.67%	4,597	31.65%	2,068	20.96%	6,684	27.28%
Male	95	83.33%	9,926	68.34%	7,797	79.03%	17,818	72.71%
Unknown	0	0	2	0.01%	1	0.01%	3	0.01%

"Unknown" indicates that the subject's gender classification was either not recorded by the officer or could not be identified by observation, nor was it clarified or confirmed by the asylum seeker. If the individual was assigned to a hold room, confirmation of gender would not be necessary; otherwise, the classification officer ultimately determined gender but did not later make the correction.

Table 4: FY 2012 Detainees by Age and Asylum Type

Age	Asylum Type			Total
	Affirmative	Credible Fear	Defensive	
Total	*114*	*14,525*	*9,866*	*24,505*
0	0	7	2	9
1	0	12	5	17
2	0	10	1	11
3	0	11	5	16
4	0	14	6	20
5	0	7	5	12
6	0	9	8	17
7	0	10	9	19
8	0	7	11	18
9	0	12	21	33
10	0	15	14	29
11	0	17	26	43
12	0	7	29	36
13	0	9	37	46
14	0	15	59	74
15	0	11	90	101
16	0	12	119	131
17	0	10	204	214
18	1	704	388	1093
19	2	1199	382	1583
20	4	1152	374	1530
21	2	1125	441	1568
22	1	999	411	1411
23	5	897	450	1352
24	5	799	435	1239
25	4	730	430	1164
26	2	660	409	1071
27	3	610	421	1034
28	3	528	383	914
29	5	494	348	847
30	5	453	352	810
31	6	399	348	753
32	5	380	296	681
33	2	346	298	646
34	6	318	257	581
35	4	296	268	568
36	6	250	200	456

Age	Asylum Type			Total
	Affirmative	Credible Fear	Defensive	
37	1	252	243	496
38	3	240	213	456
39	2	220	188	410
40	4	173	172	349
41	4	144	177	325
42	4	116	147	267
43	0	112	128	240
44	4	113	118	235
45	4	89	110	203
46	3	81	120	204
47	3	70	104	177
48	2	77	90	169
49	2	41	83	126
50	1	32	75	108
51	1	26	54	81
52	1	19	62	82
53	0	26	30	56
54	2	29	36	67
55	0	25	28	53
56	0	18	23	41
57	1	21	33	55
58	0	9	20	29
59	0	8	16	24
60	0	8	10	18
61	0	9	8	17
62	0	11	14	25
63	0	6	4	10
64	1	6	4	11
65	0	0	2	2
66	0	0	1	1
67	0	2	2	4
68	0	3	2	5
69	0	1	2	3
70	0	1	1	2
71	0	2	1	3
72	0	0	1	1
75	0	0	1	1
77	0	1	0	1
81	0	0	1	1

Table 5: FY 2012 Detainees by State/the District of Columbia/Territory, Detention Facility, and Asylum Type

State	Detention Facility	Asylum Type		
		Affirmative	Credible Fear	Defensive
	Total	*204*	*29,631*	*16,660*
ALABAMA	Total	7	16	48
	BALDWIN COUNTY COR. CENTER	1	0	0
	DEKALB COUNTY DETENTION CENTER	4	1	12
	ETOWAH COUNTY JAIL (AL)	1	15	36
	MONTGOMERY CITY JAIL	1	0	0
ALASKA	Total	0	0	1
	ANCHORAGE JAIL	0	0	1
ARIZONA	Total	15	4,194	1,642
	CCA CENTAZ DET CTR	0	154	85
	CCA, FLORENCE CORRECTIONAL CENTER	0	309	176
	ELOY FEDERAL CONTRACT FAC	3	1,346	529
	FLORENCE SPC	2	721	290
	FLORENCE STAGING FACILITY	5	1,293	216
	MARICOPA COUNTY JAIL	0	0	2
	NAVAJO COUNTY SHERIFF	0	1	0
	NEW LEAF	0	0	1
	PHOENIX DIST OFFICE	0	11	115
	PINAL COUNTY JAIL	3	330	135
	SOUTHWEST KEY CAMPBELL	0	14	57
	SOUTHWEST KEY CASA LIGHTHOUSE	1	2	1
	SOUTHWEST KEY-GLENDALE	0	6	18
	TUCSON INS HOLD ROOM	1	0	4
	TUMBLEWEED - DESERT COVE	0	1	1
	TUMBLEWEED CASA DE SUENOS-WILLETTA	0	1	5
	TUMBLEWEED MOUNTAIN VIEW	0	1	4
	YAVAPAI COUNTY DETENTION CENTER	0	4	2
	YUMA HOLDROOM	0	0	1
ARKANSAS	Total	0	0	5
	LONOKE POLICE DEPT DET.CTR	0	0	1
	MILLER COUNTY JAIL	0	0	1
	SEBASTIAN COUNTY DET CNT	0	0	3

State	Detention Facility	Asylum Type		
		Affirmative	Credible Fear	Defensive
CALIFORNIA	Total	36	1,333	4,415
	ADELANTO CORRECTIONAL FACILITY	1	38	417
	BAKERFIELD HOLD	0	0	1
	BAPTIST CHILD & FAMILY SERVICES	0	0	1
	BEST WESTERN DRAGON GATE INN	0	12	3
	CALIFORNIA CITY CORECTIONS CENTER	4	4	86
	CONTRA COSTA CO JAIL/WEST	3	20	55
	CONTRA COSTA CO. JAIL	0	1	0
	CORR.CORP OF AMERICA - SAN DIEGO	7	607	362
	CRITTENDON FOSTER CARE	0	0	3
	CRITTENDON SERVICES	0	1	27
	DAVID & MARGARET HOME	0	0	2
	EL CENTRO SPC	1	152	142
	FRESNO HOLDROOM	0	0	1
	JAMES A MUSICK FACILITY	5	146	849
	LOS ANGELES COUNTY JAIL-TWIN TOWER	0	0	11
	LOS CUST CASE	1	12	26
	MIRA LOMA DET.CENTER	4	143	273
	ORANGE COUNT INTAKE RELEASE FAC.	0	1	4
	PASADENA CITY JAIL	0	0	1
	POMONA CITY JAIL	0	0	4
	SACRAMENTO COUNTY JAIL	1	1	47
	SAN BERNARDINO CO. JAIL	0	0	2
	SAN DIEGO AREA HOSPITAL	0	7	2
	SAN PEDRO PENINSULA HOSPITAL	0	1	1
	SANTA ANA CITY JAIL	3	29	785
	SANTA ANA DRO HOLDROOM	0	1	0
	SFR HOLD ROOM	0	0	4
	SND DISTRICT STAGING	0	1	3
	SNJ HOLD ROOM	0	0	1
	SOUTHWEST KEY JUV -SAN20SE	0	0	20
	SOUTHWEST KEY LEMON GROVE	0	0	8
	SOUTHWEST KEYS JUV. FAC	0	0	12
	THEO LACY FACILITY	3	148	1,174
	WESTERN MEDICAL CENTER	0	3	10
	WHITE MEMORIAL HOSPITAL	0	1	1
	YOLO CO. JUV. DET.	0	0	2
	YUBA COUNTY JAIL	3	4	75
COLORADO	Total	0	123	154
	CONEJOS COUNTY JAIL	0	0	1
	DENVER CONTRACT DET. FAC.	0	42	103
	DENVER COUNTY JAIL	0	0	2
	DENVER HOLD ROOM	0	0	2
	EL PASO COUNTY JAIL (CO)	0	47	36
	FREMONT COUNTY JAIL, CO	0	0	2
	MOFFAT COUNTY JAIL	0	0	3
	PARK COUNTY JAIL	0	21	1
	PUEBLO HOLDROOM	0	0	1
	TELLER COUNTY JAIL	0	13	3

State	Detention Facility	Asylum Type		
		Affirmative	Credible Fear	Defensive
CONNECTICUT		0	0	0
DISTRICT OF COLUMBIA	Total	0	0	7
	ORR FOSTER CARE	0	0	7
FLORIDA	Total	29	363	1,347
	ATLANTIC SHORES HOSPITAL	0	0	5
	BAKER COUNTY SHERIFF DEPT	2	2	97
	BOYSTOWN	0	1	31
	BROWARD GENERAL MEDICAL CENTER	0	3	0
	COLLIER COUNTY SHERIFF	0	0	38
	COLUMBIA KENDAL HOSPITAL	0	0	2
	COMFORT SUITES HOTEL	0	12	0
	GLADES COUNTY DETENTION CENTER	1	3	154
	HIS HOUSE CHILDREN'S HOME	0	0	33
	KROME NORTH SPC	11	40	423
	KROME/MIAMI HUB	0	1	2
	LARKIN HOSPITAL	0	0	4
	MIAMI STAGING FACILITY	0	1	24
	MONROE COUNTY JAIL	2	1	78
	NORTH BROWARD MEDICAL CENTER	0	2	0
	ORANGE COUNTY JAIL	0	1	7
	PALMETTO HOSPITAL	0	1	1
	PINELLAS COUNTY JAIL	0	2	13
	SANDY PINES HOSPITAL	0	0	1
	TAMPA HOLD ROOM	0	0	1
	WACKENHUT CORRECTIONS CORP	11	292	394
	WAKULLA COUNTY JAIL	2	1	39
GEORGIA	Total	6	212	224
	ATLANTA DIST. HOLD RM	0	0	2
	ATLANTA PRETRIAL DETN CTR	0	48	28
	COBB COUNTY JAIL	0	0	4
	HALL CO JAIL	0	0	3
	IRWIN COUNTY SHERIFF	3	119	96
	NORTH GEORGIA DETENTION CENTER	0	4	41
	STEWART DETENTION CENTER	3	41	48
	WHITFIELD COUNTY JAIL	0	0	2
GUAM	Total	4	0	21
	DEPT OF CORRECTIONS-HAGATNA	4	0	21

State	Detention Facility	Asylum Type		
		Affirmative	Credible Fear	Defensive
MASSACHUSETTS	Total	3	11	87
	BRISTOL CNTY NDARTMOUTH	1	2	16
	GREENFIELD HOUSE OF CORR.	0	0	12
	LUTHERAN COMMUNITY SERVICES	0	0	3
	NORFLK CNTY DEDHAM	0	0	2
	PLYMOUTH COUNTY H.O.C.	0	3	22
	SUFFOLK HOC SBAY	2	6	32
MICHIGAN	Total	2	29	203
	BETHANY C.S. GRAND RAPIDS	0	0	1
	CALHOUN CO., BATTLE CR.,MI	0	5	58
	CHIPPEWA CO., SSM	0	0	17
	DEARBORN POLICE DEPT.	1	12	46
	MONROE COUNTY DETENTION-DORM	0	4	37
	ST. CLAIR COUNTY JAIL	1	8	44
MINNESOTA	Total	2	5	179
	CARVER COUNTY JAIL	0	0	23
	FREEBORN COUNTY JAIL, MN	0	1	25
	NOBLES CO. JAIL	0	0	18
	RAMSEY ADC ANNEX, SPM	1	2	30
	SHERBURNE COUNTY JAIL	1	2	82
	US INS/DETENTION & DEPORTATION	0	0	1
MISSOURI	Total	2	0	34
	CALDWELL COUNTY JAIL	0	0	9
	CHRISTIAN CO SHERIFF DEPT	0	0	1
	LINCOLN COUNTY SHERIFF'S	0	0	1
	MISSISSIPPI COUNTY DETENTION CENTE	1	0	6
	MONTGOMERY COUNTY JAIL	0	0	1
	MORGAN COUNTY SHERIFF'S DEPT	1	0	13
	PLATTE COUNTY JAIL	0	0	2
	SCOTT COUNTY JAIL	0	0	1
MONTANA	Total	0	4	6
	CASCADE COUNTY JAIL, MT	0	1	2
	HILL COUNTY JUSTICE CENTER	0	0	2
	JEFFERSON COUNTY JAIL	0	1	2
	TOOLE COUNTY	0	2	0
NEBRASKA	Total	7	1	134
	CASS COUNTY JAIL	1	1	10
	DAKOTA COUNTY JAIL	0	0	21
	DOUGLAS COUNTY CORRECTION	4	0	46
	HALL COUNTY SHERIFF	1	0	46
	PHELPS COUNTY JAIL	1	0	11

State	Detention Facility	Asylum Type		
		Affirmative	Credible Fear	Defensive
NEVADA	Total	0	2	76
	HENDERSON DETENTION	0	1	65
	WASHOE COUNTY JAIL	0	1	11
NEW HAMPSHIRE	Total	0	4	14
	STRAFFORD CO. CORRECTION	0	4	14
NEW JERSEY	Total	17	237	542
	BERGEN COUNTY JAIL	0	0	15
	DELANEY HALL DETENTION FACILITY	10	109	176
	ELIZABETH CONTRACT D.F.	4	102	125
	ESSEX COUNTY JAIL	1	18	139
	HUDSON COUNTY JAIL	1	7	66
	MONMOUTH COUNTY JAIL	1	1	18
	SUSSEX COUNTY JAIL	0	0	3
NEW MEXICO	Total	0	321	45
	OTERO CO PROCESSING CENTER	0	282	42
	OTERO COUNTY DETENTION	0	1	1
	OTERO COUNTY PRISON FACILITY	0	38	2
NEW YORK	Total	1	105	196
	ALBANY COUNTY JAIL	0	11	11
	ALLEGANY COUNTY JAIL	0	5	10
	BUFFALO SPC	1	71	89
	CHAUTAUQUA COUNTY JAIL	0	2	1
	CHILDREN'S VILLAGE	0	0	18
	CLINTON COUNTY JAIL	0	4	23
	NYC FIELD OFFICE	0	0	1
	ONONDAGA COUNTY JAIL	0	1	1
	ONTARIO COUNTY JAIL	0	1	3
	ORANGE COUNTY JAIL	0	1	25
	VARICK STREET SPC	0	1	4
	WAYNE COUNTY JAIL	0	8	10
NORTH CAROLINA	Total	0	5	25
	ALAMANCE CO. DET. FACILITY	0	0	13
	HENDERSON COUNTY DET. FAC.	0	0	4
	MECKLENBURG (NC) CO JAIL	0	5	4
	NEW HANOVER CO DET CENTER	0	0	1
	WAKE COUNTY SHERIFF DEPT.	0	0	3
NORTH DAKOTA	Total	0	1	26
	BOTTINEAU CO. ND JAIL	0	0	1
	BURLEIGH CO. JAIL, ND	0	0	1
	GRAND FORKS COUNTY CORREC	0	1	24
NORTHERN MARIANA	Total	0	4	4
	SAIPAN DEPARTMENT OF CORRECTIONS	0	4	4
OHIO	Total	1	1	264
	BEDFORD HEIGHTS CITY	1	0	58
	BUTLER COUNTY JAIL	0	0	101
	CLEVELAND HOLD ROOM	0	0	1
	GEAUGA COUNTY JAIL	0	1	50
	MORROW CO. CORRECTIONAL FACILITY	0	0	18
	SENECA COUNTY JAIL	0	0	36

State	Detention Facility	Asylum Type		
		Affirmative	Credible Fear	Defensive
OKLAHOMA		0	0	0
OREGON	Total	0	0	107
	COLUMBIA COUNTY JAIL	0	0	18
	DOUGLAS CO. JAIL	0	0	2
	JACKSON CO JAIL	0	0	6
	JOSEPHINE CO. JAIL	0	0	60
	KLAMATH CO JAIL	0	0	3
	MORRISON CENTER	0	0	3
	NORTHERN OREGON CORR.FAC	0	0	13
	UMATILLA CO JAIL	0	0	2
PENNSYLVANIA	Total	1	419	451
	ALLEGHENY CO. JAIL	0	1	3
	BERKS COUNTY FAMILY SHELTER	0	291	124
	CAMBRIA COUNTY JAIL, PA	0	1	17
	CLINTON COUNTY CORR. FAC.	0	0	19
	ERIE COUNTY JAIL, PA	0	0	10
	MONTGOMERY CNTY JAIL, PA	0	2	13
	PIKE COUNTY JAIL	0	8	60
	YORK COUNTY JAIL, PA	1	116	205
PUERTO RICO	Total	2	59	5
	DHS/ICE/DRO	2	57	4
	GUAYNABO MDC (SAN JUAN)	0	2	1
RHODE ISLAND		0	0	0
SOUTH CAROLINA	Total	1	6	17
	CHARLESTON COUNTY CORRECT	0	0	4
	LEXINGTON COUNTY JAIL	0	0	2
	YORK COUNTY DETENTION CENTER	1	6	11
SOUTH DAKOTA	Total	0	0	1
	PENNINGTON COUNTY JAIL SD	0	0	1
TENNESSEE	Total	0	0	4
	DAVIDSON CO. SHERIFF DEPT	0	0	4

State	Detention Facility	Asylum Type		
		Affirmative	Credible Fear	Defensive
TEXAS	Total	25	20,681	3,929
	AUSTIN DRO HOLD ROOM	0	0	2
	BAPTIST CHILD & FAMILY SERVICES	0	3	88
	BAPTIST CHILD/FAMILY SVCS-HAYTOWN	0	0	3
	BEDFORD CITY JAIL	0	6	17
	BROOKS COUNTY JAIL (CONTRACT)	0	124	3
	CATHOLIC CHARITIES (HOU)	0	0	20
	CHILDREN'S CENTER INC	0	0	9
	COASTAL BEND DET. FACILITY	0	287	2
	CORPUS CHRISTI FACILITY	0	0	37
	EAST HIDALGO DETENTION CENTER	3	2,236	95
	EL PASO SPC	2	517	92
	EL PASO SPC JUVENILE	0	0	1
	EULESS CITY JAIL	0	15	30
	HARLINGEN MEDICAL CENTER	0	6	0
	HOUSTON CONTRACT DET.FAC.	7	282	214
	HOUSTON FO HOLDROOM	1	0	7
	HUTTO CCA	2	1,965	591
	IES SHELTER	0	6	279
	JACK HARWELL DETENTION CENTER	0	239	8
	JOHNSON COUNTY JAIL	0	39	24
	KARNES COUNTY CIVIL DET. CENTER	0	2,153	118
	KARNES CTY CORR CTR	0	575	22
	LA SALLE CO REGIONAL DET. CENTER	0	485	25
	LAREDO CONTRACT DET. FAC	0	1,908	108
	LOS FRESNOS HOLD ROOM	0	195	16
	LUTHERAN SOCIAL SERVICES	0	0	14
	MONTGOMERY COUNTY JAIL	2	244	33
	POLK COUNTY JAIL	2	208	84
	PORT ISABEL SPC	4	2,505	1,076
	RANDALL COUNTY JAIL	0	0	4
	RIO GRANDE VALLEY STAGING	1	2,257	131
	ROLLING PLAINS DETENTION CENTER	0	16	39
	SAN ANTONIO DRO HOLD ROOM	0	0	1
	SHILOH TREATMANT CENTER	0	0	2
	SOUTH TEXAS DETENTION COMPLEX	1	3,624	603
	SOUTH TEXAS/PEARSALL HOLD ROOM	0	0	2
	SOUTHWEST KEY - HOUSTON	0	1	5
	SOUTHWEST KEY CASA FRANKLIN	0	0	10
	SOUTHWEST KEY CASITA EL PASO	0	0	18
	SOUTHWEST KEY CONROE	0	1	14
	SOUTHWEST KEY HOUSTON-DOWNTOWN	0	0	3
	SOUTHWEST KEY PROG. (JUV)	0	2	29
	SOUTHWEST KEY-CASA BLANCA	0	4	19
	VAL VERDE DETENTION CENTER	0	772	5
	VALLEY BAPTIST HOSPITAL	0	27	13
	WACKENHUT FACILITY	0	0	3
	WEST OAKS HOSPITAL	0	0	2
	WEST TEXAS DETENTION FACILITY	0	1	0
UTAH	Total	0	3	21
	UTAH COUNTY JAIL	0	3	20
	WASHINGTON COUNTY JAIL	0	0	1
VERMONT	Total	0	2	7
	ADDISON COUNTY JAIL	0	0	1
	CHITTENDEN REG. COR. FACILITY	0	1	1
	NORTHWEST STATE CORRECTIONAL CTR.	0	1	5

State	Detention Facility	Asylum Type		
		Affirmative	Credible Fear	Defensive
VIRGIN ISLANDS		0	0	0
VIRGINIA	Total	6	290	461
	HAMPTON ROADS REGIONAL JAIL	0	25	94
	HARRISONBURG HOLD ROOM	0	0	1
	ICA - FARMVILLE	4	222	253
	RAPP SEC CENTER	2	41	106
	ROANOKE CITY JAIL	0	0	2
	SHENANDOAH VALLEY JUVENILE CENTER	0	0	3
	WASHINGTON FIELD OFFICE	0	2	2
WASHINGTON	Total	1	246	724
	CATHOLIC SOCIAL SERVICES	0	0	1
	CHELAN CO. REGIONAL JAIL	0	0	1
	COWLITZ CO. JUV. DET.	0	0	1
	FRIENDS OF YOUTH(THERAPUETIC SSF)	0	0	4
	NORTHWEST DET. CENTER	1	238	689
	PIONEER HUMAN SERVICES	0	0	3
	RED ROOF INN	0	8	0
	SEATTLE FIELD OFFICE HOLD ROOM	0	0	1
	YAKIMA COUNTY	0	0	18
	YAKIMA SUB-OFFICE	0	0	1
	YOUTHCARE	0	0	5
WEST VIRGINIA	Total	0	0	2
	EASTERN REGIONAL JAIL	0	0	1
	SOUTH CENTRAL REGIONAL JAIL	0	0	1
WISCONSIN	Total	8	67	295
	DODGE COUNTY JAIL, JUNEAU	0	32	144
	KENOSHA COUNTY JAIL	8	35	151
WYOMING	Total	0	0	3
	PLATTE COUNTY JAIL	0	0	1
	SWEETWATER COUNTY JAIL	0	0	1
	TETON COUNTY DETENTION CENTER	0	0	1

Note: This table represents all of a detainee's transfers for; thus, there is not a one-to-one match between a facility and a detainee.

Table 6: FY 2012 Detainees by Frequency of Transfers between Detention Facilities and Asylum Type

Transfers	Asylum Type						Total	
	Affirmative		Credible Fear		Defensive			
Total	*114*	*100.00%*	*14,525*	*100.00%*	*9,866*	*100.00%*	*24,505*	*100.00%*
1	70	61.40%	5,055	34.80%	6,651	67.41%	11,776	48.06%
2	22	19.30%	5,667	39.02%	1,930	19.56%	7,619	31.09%
3	10	8.77%	2,514	17.31%	589	5.97%	3,113	12.70%
4	8	7.02%	928	6.39%	208	2.11%	1,144	4.67%
5	2	1.75%	251	1.73%	122	1.24%	375	1.53%
6	1	0.88%	75	0.52%	106	1.07%	182	0.74%
7	0	0.00%	22	0.15%	92	0.93%	114	0.47%
8	0	0.00%	5	0.03%	57	0.58%	62	0.25%
9	0	0.00%	3	0.02%	48	0.49%	51	0.21%
10	0	0.00%	2	0.01%	16	0.16%	18	0.07%
11	0	0.00%	1	0.01%	15	0.15%	16	0.07%
12	1	0.88%	1	0.01%	13	0.13%	15	0.06%
13	0	0.00%	0	0.00%	3	0.03%	3	0.01%
14	0	0.00%	0	0.00%	6	0.06%	6	0.02%
15	0	0.00%	0	0.00%	3	0.03%	3	0.01%
16	0	0.00%	0	0.00%	3	0.03%	3	0.01%
17	0	0.00%	0	0.00%	1	0.01%	1	0.00%
18	0	0.00%	0	0.00%	1	0.01%	1	0.00%
19	0	0.00%	1	0.01%	0	0.00%	1	0.00%
20	0	0.00%	0	0.00%	2	0.02%	2	0.01%

Table 7: FY 2012 Detainees by Length of Detention and Asylum Type

Length of Detention	Asylum Type						Total	
	Affirmative		Credible Fear		Defensive			
	Released	In Custody	Released	In Custody	Released	In Custody	Released	In Custody
Total	*84*	*30*	*13,687*	*838*	*8,226*	*1,610*	*51,997*	*2,508*
0 - 30 days	41	6	1,442	7	3,665	30	5,148	43
31 - 60 days	16	2	5,305	17	1,677	34	6,998	53
61 - 90 days	8	6	3,890	75	822	67	4,720	148
91 - 120 days	8	1	1,832	282	566	272	2,406	555
121 - 150 days	1	5	888	180	446	206	1,135	391
151 - 180 days	3	4	261	77	300	240	564	321
181 - 210 days	0	2	118	72	224	198	342	272
211 - 240 days	1	3	63	39	187	135	251	177
241 - 270 days	2	0	34	26	122	108	158	134
271 - 300 days	2	0	18	10	92	111	112	121
301 - 330 days	1	0	17	12	58	67	76	79
331 - 365 days	0	0	13	14	36	55	49	69
> 365 days	1	1	6	27	31	117	38	145

Table 8a: FY 2012 Detainees by Case, Area of Responsibility, and Type of Release Reason (Affirmative Cases)

Affirmative Cases												
		Release Reason										
Area of Responsibility	Total	BOND	DEP	DETN	OR	OS	OTHER	PARO	USM	VD	WITH	XFER
Total	*114*	*32*	*37*	*31*	*9*	*4*	*2*	*4*	*5*	*2*	*1*	*9*
ATLANTA	5	2	2	0	0	0	0	0	0	0	0	0
BALTIMORE	1	1	0	0	0	0	0	0	0	0	0	0
BOSTON	1	1	0	0	0	0	0	0	0	0	0	0
BUFFALO	1	0	0	1	0	0	0	0	0	0	0	0
CHICAGO	3	1	0	1	1	0	0	0	0	0	0	0
DETROIT	2	0	0	1	0	0	0	0	1	0	0	0
EL PASO	2	1	0	0	1	0	0	0	0	0	0	0
HOUSTON	6	0	2	3	0	0	0	0	0	0	0	1
LOS ANGELES	8	0	1	1	1	0	0	0	0	0	0	3
MIAMI	20	9	0	6	2	1	1	2	0	1	0	2
NEWARK	8	1	1	5	0	0	1	0	0	0	0	0
NEW ORLEANS	10	0	6	3	0	0	0	0	1	0	0	0
NEW YORK	2	2	0	0	0	0	0	0	0	0	0	0
PHILADELPHIA	1	1	0	0	0	0	0	0	0	0	0	0
PHOENIX	7	1	3	4	1	0	0	0	0	0	0	0
SEATTLE	1	0	1	0	0	0	0	0	0	0	0	0
SAN FRANCISCO	13	6	0	3	0	1	0	0	0	0	0	3
SAN ANTONIO	9	1	2	2	3	1	0	0	0	0	0	0
SAN DIEGO	8	3	0	1	0	1	1	2	0	0	0	0
ST. PAUL	7	4	1	0	0	0	0	0	0	1	1	0
WASHINGTON	1	1	0	0	0	0	0	0	0	0	0	0

The following is a list of release reason acronyms with explanations.

- BOND (released on bond);
- DEP (released for removal from the United States);
- DETN (still in detention at end of the reporting period);
- OR (released on an order of recognizance);
- OS (released on an order of supervision);
- OTHER (includes escaped (ESC); lack of funds non-detained (LFND); lack of funds, lack of space (LFSP); and all cases deemed unclassified for release details);
- PARO (paroled into the United States);
- USM (released to the U.S. Marshals Service);
- VD (released for voluntary departure from the United States);
- WITH (released, alien withdrew the application); and
- XFER (transferred between facilities).

Table 8b: FY 2012 Detainees by Case, Area of Responsibility, and Type of Release Reason (Credible Fear Cases)

Credible Fear Cases												
		Release Reason										
Area of Responsibility	Total	BOND	DEP	DETN	OR	OS	OTHER	PARO	USM	VD	WITH	XFER
Total	*14,525*	*4,989*	*2,394*	*881*	*3,841*	*242*	*175*	*1,173*	*23*	*28*	*1*	*793*
ATLANTA	173	4	79	51	5	0	1	5	0	0	0	28
BALTIMORE	6	0	0	0	2	0	4	0	0	0	0	0
BOSTON	14	0	2	4	4	0	0	3	0	0	0	1
BUFFALO	53	26	5	8	0	0	3	10	0	0	0	0
CHICAGO	47	5	6	0	0	2	0	5	1	0	0	28
DALLAS	50	16	17	9	1	0	1	0	0	2	0	4
DENVER	65	50	4	1	0	0	0	0	0	0	0	7
DETROIT	13	0	8	1	0	1	0	3	0	0	0	0
EL PASO	710	169	224	83	13	3	4	121	2	8	0	83
HOUSTON	549	288	220	23	1	0	1	12	2	0	1	1
LOS ANGELES	204	2	6	18	6	4	7	97	0	0	0	70
MIAMI	268	5	20	11	11	91	0	108	1	0	0	19
NEWARK	130	23	14	7	1	0	11	51	0	0	0	3
NEW ORLEANS	667	335	279	36	1	8	0	3	0	1	0	4
NEW YORK	6	0	1	3	0	0	0	0	0	0	0	2
PHILADELPHIA	367	4	25	24	26	0	1	285	2	0	0	0
PHOENIX	2,226	1,010	496	210	13	2	1	91	0	2	0	401
SEATTLE	199	127	8	18	6	1	3	28	1	0	0	7
SAN FRANCISCO	32	10	3	2	4	2	2	1	3	1	0	4
SALT LAKE CITY	4	0	3	0	0	1	0	0	0	0	0	0
SAN ANTONIO	7,970	2,776	883	291	3,728	110	90	107	10	9	0	56
SAN DIEGO	686	118	90	158	21	15	42	181	0	3	0	58
ST. PAUL	4	0	0	0	1	1	1	0	1	0	0	0
WASHINGTON	102	1	0	13	3	1	3	64	0	0	0	17

The following is a list of release reason acronyms with explanations.

- BOND (released on bond);
- DEP (released for removal from the United States);
- DETN (still in detention at end of the reporting period);
- OR (released on an order of recognizance);
- OS (released on an order of supervision);
- OTHER (includes escaped (ESC); lack of funds non-detained (LFND); lack of funds, lack of space (LFSP); and all cases deemed unclassified for release details);
- PARO (paroled into the United States);
- USM (released to the U.S. Marshals Service);
- VD (released for voluntary departure from the United States);
- WITH (released, alien withdrew the application); and
- XFER (transferred between facilities).

Table 8c: FY 2012 Detainees by Case, Area of Responsibility, and Type of Release Reason (Defensive Cases)

Defensive Cases													
		Release Reason											
Area of Responsibility	Total	BOND	DEP	DETN	DIED	OR	OS	OTHER	PARO	USM	VD	WITH	XFER
Total	*2,998*	*5,859*	*824*	*1,670*	*1*	*1,514*	*246*	*430*	*468*	*49*	*48*	*4*	*548*
ATLANTA	150	32	21	46	0	10	5	9	7	7	0	0	22
BALTIMORE	58	34	0	12	0	2	4	4	0	1	0	0	1
BOSTON	69	26	9	23	0	2	0	8	2	0	0	0	2
BUFFALO	77	46	3	20	0	5	3	7	3	0	0	0	0
CHICAGO	232	22	27	50	0	80	5	9	2	3	0	0	30
DALLAS	38	11	6	12	0	1	0	1	0	1	2	0	4
DENVER	94	46	8	29	1	0	4	2	1	1	1	0	1
DETROIT	280	160	28	30	0	1	16	29	2	4	8	0	2
EL PASO	178	27	31	41	0	8	0	67	2	0	1	0	5
HOUSTON	103	91	64	47	0	85	2	9	3	3	1	0	0
LOS ANGELES	1,035	292	6	289	0	54	17	23	60	14	0	1	299
MIAMI	692	201	33	170	0	76	22	24	46	7	2	0	101
NEWARK	372	104	26	123	0	3	5	33	30	2	3	0	1
NEW ORLEANS	263	43	168	34	0	0	7	2	0	0	2	0	5
NEW YORK	120	47	2	38	0	17	1	1	0	0	0	0	14
PHILADELPHIA	320	124	12	52	0	31	8	3	79	1	2	0	5
PHOENIX	1,137	517	89	122	0	92	9	20	28	0	5	0	261
SEATTLE	664	430	22	121	0	18	11	34	10	4	0	0	14
SAN FRANCISCO	206	74	22	51	0	19	9	10	0	1	1	0	19
SALT LAKE CITY	87	33	14	23	0	0	4	7	0	0	0	0	1
SAN ANTONIO	2,566	1,210	163	123	0	840	36	131	52	3	7	1	16
SAN DIEGO	490	100	36	104	0	19	24	48	133	0	3	0	23
ST. PAUL	230	104	30	43	0	2	21	23	0	0	5	1	1
WASHINGTON	226	115	0	65	0	8	2	4	7	2	0	1	22

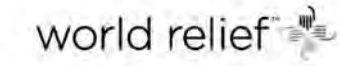
The following is a comprehensive list of release reason acronyms with explanations. Some may or may not appear in the table above:

- BOND (released on bond);
- DEP (released for removal from the United States);
- DETN (still in detention at end of the reporting period);
- DIED (release reason entered as died);
- OR (released on an order of recognizance);
- OS (released on an order of supervision);
- OTHER (includes escaped (ESC); lack of funds non-detained (LFND); lack of funds, lack of space (LFSP); and all cases deemed unclassified for release details);
- PARO (paroled into the United States);
- USM (released to the U.S. Marshals Service);
- VD (released for voluntary departure from the United States);
- WITH (released, alien withdrew the application); and
- XFER (transferred between facilities).

Table 9: FY 2012 Detainees by Disposition of Cases and Asylum Type

Case Status	Asylum Type						Total	
	Affirmative		Credible Fear		Defensive			
	# Detained	% Detained	# Detained	% Detained	# Detained	% Detained	# Detained	% Detained
Total	*114*	*100.00%*	*14,525*	*100.00%*	*9,866*	*100.00%*	*24,505*	*100.00%*
Died	*0*	*0.00%*	*1*	*0.01%*	*2*	*0.02%*	*3*	*0.01%*
Granted asylum/other relief	18	15.79%	741	5.10%	1,049	10.63%	1,808	7.38%
Pending	59	51.75%	10,795	74.32%	7,071	71.67%	17,925	73.15%
Removed from the U.S	34	29.82%	2,924	20.13%	1,522	15.43%	4,480	18.28%
Voluntary Departure	2	1.75%	52	0.36%	218	2.21%	272	1.11%
Withdrawal of Application	1	0.0088	12	0.08%	4	0.04%	17	0.07%

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security



Statement in Support of Stronger Protections for Those Fleeing Persecution for the U.S. House of Representatives Committee on the Judiciary Hearing "Asylum Abuse: Is it Overwhelming our Borders?"

December 12th, 2013

The United States of America has a long and proud tradition of being a beacon of hope for victims of persecution around the world, providing safe haven to those in search of protection. Such tradition is enshrined in our asylum process and the refugee resettlement program, which are codified in the Refugee Act of 1980, which has afforded protection to thousands of bona fide asylum-seekers and refugees for over three decades.

Asylum-seekers who rebuild their lives in the United States do so in freedom and have contributed in countless ways to our country. Yet, the asylum system has become inefficient and uneven over the years, denying asylum claims and deporting individuals back to countries of persecution due to an arbitrary filing deadline, detaining bona fide asylum-seekers in jail-like facilities for months at a time without an opportunity for them to have their claims heard, and preventing those already granted asylum from fully integrating into the United States through the adjustment of status and citizenship due to ill-conceived terrorism-related bars. While several improvements have been made by the current and former Administrations, the asylum process is in critical need of reform to ensure that it is fair and efficient.

We support the following reforms that would strengthen the asylum system. Specifically, we support legislation to authorize Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) asylum officers to adjudicate asylum claims and the elimination of the 1-year filing deadline, and urge Congressional oversight for other needed Administrative reforms.

Issue Regulations Codifying Recent Improvements to Expedited Removal

Expedited removal authorizes U.S. immigration officials to summarily return people arriving in the United States without proper documentation to their country of origin. Because many bona fide asylum seekers are unable to acquire proper documents, Congress included provisions for asylum seekers to be detained while a determination is made if they have a credible fear of persecution. Recent Immigration and Customs Enforcement (ICE) practice also dictates that if an asylum seeker is found to have a credible fear of persecution, this individual can be released from detention on parole while his or her case is pending before an immigration judge.

In FY2012, ICE reported that 80% of asylum seekers found to have a credible fear were granted parole and the other 20% were detained as they could not establish "exceptional overriding factors."[1] While the parole guidelines released by ICE in 2009 help ensure asylum-seekers are not inappropriately detained, ICE should codify into regulations the new parole process and criteria under which asylum seekers who are found to have a credible fear of persecution can be paroled instead of detained.

Improve Detention Standards for Asylum-seekers
Asylum-seekers arrive to the United States having faced trauma. Detaining such individuals in penal detention centers risks re-traumatizing these individuals. A 2005 study by the U.S. Commission on International Religious Freedom (USCIRF) found that in some facilities, asylum seekers were housed with inmates serving criminal sentences or criminal aliens, despite ICE detention standards forbidding the co-mingling of non-criminal detainees with criminals.[2] In addition, the study found asylum seekers were required to wear prison uniforms and were handcuffed and shackled like criminals.[3] A newly released study by USCIRF in April 2013, found that only 4,000 of ICE's 33,400 detention beds are in civil facilities. Most asylum-seekers continue to be held in jail-like facilities.[4]

Detention should not be used as standard practice. Asylum seekers, who in many cases are already traumatized, should only be detained in rare cases where necessary to protect national security or to ensure fraudulent documents are not used to assert an asylum claim. When detention must be used, ICE should ensure all asylum seekers are detained in civil facilities only and that such facilities meet minimum standards of care for the detainees. Such facilities should allow for greater freedom of movement, expanded programming activities, and access to legal counsel and a Legal Orientation Program (LOP).

Authorize DHS/USCIS Asylum Officers to Adjudicate Asylum Claims
Trained USCIS asylum officers make a credible fear determination and then refer asylum-seekers identified at or near a U.S. border who have demonstrated a credible fear of return to overwhelmed immigration courts rather than adjudicating the case themselves as they do in affirmative asylum cases. This unnecessarily adds to the burden on the immigration courts, uses scarce government resources inefficiently, and exposes asylum-seekers to additional trauma and in some cases prolonged detention.

For those asylum seekers found to have a credible fear, they may then submit an asylum application to an immigration court within Department of Justice (DOJ)'s Executive Office for Immigration Review (EOIR), and immigration judges hear the cases. Denied asylum seekers can file an appeal with the Board of Immigration Appeals (BIA). With these various agencies and adjudicating officers making decisions at various points in the asylum process, coordination remains a major challenge between DHS and DOJ and also within DHS itself.

To make the process more efficient and for humanitarian reasons, we urge the authorization of asylum officers to conduct full, non-adversarial asylum interviews of asylum-seekers identified at or near a U.S. border, rather than sending them directly to full adversarial hearings before the immigration courts. This

[1] Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms (2013), U.S. Commission on International Religious Freedom, available online at http://www.uscirf.gov/images/FRS-detention%20reforms%20report%20April%202013.pdf
[2] Report on Asylum Seekers in Expedited Removal, U.S. Commission on International Religious Freedom (2005), available online at http://www.uscirf.gov/reports-and-briefs/special-reports/1892-report-on-asylum-seekers-in-expedited-removal.html
[3] Ibid
[4] Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms (2013), U.S. Commission on International Religious Freedom, available online at http://www.uscirf.gov/images/FRS-detention%20reforms%20report%20April%202013.pdf

would occur after they have both expressed a fear of return to Customs and Border Patrol (CBP) and successfully passed a credible fear interview. All of the background and security checks in the current process would be maintained. This would resolve many asylum cases effectively without the need to expend the additional resources required for immigration court hearings and also reduce the number of claims heard in the Board of Immigration Appeals. The ability for an asylum-seeker to also discuss their situation in a non-adversarial setting would facilitate more detailed, improved information about the claim.

Eliminate the 1-year Filing Deadline
The 1-year filing deadline instituted in 1996 as a fraud deterrent has become a barrier to many with a well-founded fear of persecution. Some asylum seekers with a well-founded fear of persecution have been denied asylum and/or ordered deported simply because they did not meet the 1-year deadline as they were unaware of the deadline or in some cases have been so severely traumatized that it takes over a year to process and write about their situation in an asylum application. A study by Philip Schrag in the William and Mary Law Review, in fact, found that since 1998, DHS rejected, because of the deadline, at least 15,700 individuals to whom it would otherwise have granted asylum.[5]

Any and all fraudulent asylum claims should be investigated and dealt with accordingly. The United States has instituted strong anti-fraud measures in the asylum system to ensure fraudulent claims are properly dealt with and doing so ensures the integrity of the system. The filing deadline, however, has had limited impact on deterring fraud, and instead made the current system more inefficient as the overburdened immigration courts have to divert limited time and resources focused on determining the date of entry and filing date instead of assessing the actual merits of the asylum claim. Even asylum seekers who file within 1 year of arrival may still be negatively impacted by the deadline if they cannot show their date of entry. Extending the deadline to two or five years or expanding the exceptions to the deadline would not resolve the problem as the courts will still need to determine date of entry as a core determining factor in their asylum claim.

Refugees barred by the current filing deadline only have access to a temporary form of protection, withholding of removal, but this does not provide long term stability or security through permanent residency and leaves them at risk of deportation and detention. Withholding of removal also does not allow refugees to petition to bring their children and spouses to safety in the United States, keeping refugee families divided and leaving young children stranded in difficult and dangerous circumstances abroad.

We strongly support eliminating the filing deadline so bona fide refugees will not be returned back to their country of persecution based on an arbitrary requirement.

Ameliorate Unintended Consequences of Terrorism-related Inadmissibility Grounds (TRIG)
For over a decade, expanded definitions of "terrorism" and "terrorism-related activity" in the USA Patriot Act of 2001 and the Real ID Act of 2005 have denied bona fide refugees and asylees admission, legal permanent residence, and the ability to bring their spouses and children who remain overseas to the United States.

There currently are over 3,000 refugees and asylees whose cases are on hold, despite having passed the difficult test to prove they are refugees. Some are refugees who are in dangerous situations abroad whose resettlement to the United States would offer them and their families protection from danger. In some cases, refugees and asylees who have been legally admitted to this country have waited as long as ten years to obtain legal permanent residence and reunite with their spouses and children. While this and

[5] Schrag, Philip, "Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum," William and Mary Law Review 651 (2010), available online at http://wmlawreview.org/files/Schrag.pdf

previous Administrations have taken steps to issue exemptions, more must be done to fully implement the authority they have to ensure these bona fide refugees and asylum-seekers do not stay in legal limbo.

We urge USCIS to allow officers to examine cases and provide relief to individuals on a case-by-case basis for refugees who had voluntary associations with Tier III groups not designated as terrorist groups or treated as such by the U.S. government in any other context. Congress should also review and revise current legal interpretations of what constitutes "material support" to ensure statutory interpretations are brought in line with the purpose of the law, which is to exclude and deny relief to persons who provide meaningful support to terrorist groups and pose a terrorist threat to the United States.

Conclusion
As the House of Representatives considers major changes to our immigration laws, we urge you to give due consideration to strengthening our current asylum and refugee resettlement systems in a way that provides a fair and efficient process for those fleeing persecution to find safety in the United States. Specifically, we urge improvements to the expedited removal process, improved detention standards for asylum seekers and other immigrants, the authority for DHS/USCIS officers to adjudicate asylum claims, the elimination of the one-year filing deadline, and a re-examination of the impact of terrorism-related admissibility grounds (TRIG) on refugees and asylees.

The House of Representatives has a unique opportunity to ensure that our laws and the administration of those laws are consistent with the traditions and legacies that makes the United States a world leader in refugee protection.

Signed by:

Leith Anderson
President
National Association of Evangelicals

Stephan Bauman
President and CEO
World Relief

Robert Gittelson
Vice President of Government Relations
National Hispanic Christian Leadership Conference

Russell D. Moore
President
Southern Baptist Ethics & Religious Liberty Commission

Samuel Rodriguez Jr.
President
National Hispanic Christian Leadership Conference

Mathew Staver
Founder and Chairman of the Board, Liberty Counsel
Dean, Liberty University School of Law

Testimony

Of

Most Reverend Eusebio Elizondo, M.Sp.S.

Auxiliary Bishop of the Archdiocese of Seattle, WA

Chairman, U.S. Conference of Catholic Bishops' Committee on Migration

Before the

House Judiciary Committee Subcommittee

Asylum Fraud: Abusing America's Compassion?

2141 Rayburn House Office Building

Tuesday, February 11, 2014

I am Bishop Eusebio Elizondo, auxiliary bishop of the archdiocese of Seattle, WA, and chairman of the U.S. Conference of Catholic Bishops' (USCCB) Committee on Migration. I testify today on behalf of the Committee on Migration about the Catholic Church's perspective on U.S. asylum policy.

I would like to thank Chairman Gowdy and Ranking Member Lofrgren for the opportunity to comment on the important topic of U.S. asylum policy. As Catholics and Christians we recall that Jesus himself was an asylum-seeker. One of Jesus' first experiences as an infant was to flee for his life from King Herod with his family to Egypt. Jesus, Mary, and Joseph were asylum-seekers and faced the same choice as the one facing thousands of asylum-seekers who flee to the United States every year.

Mr. Chairman, my testimony today will recommend that Congress:

- Strengthen the nation's asylum regime to ensure robust and humane asylum protection for bona-fide asylum seekers to our country;
- Support Mexico to strengthen its refugee protection systems; and
- Examine and seek solutions to the root causes of migration, such as violence from non-state actors in countries of origin.

I. Catholic Social Teaching

The Catholic Church is an immigrant church. I myself was born in Mexico and am among the more than one-third of Catholics in the United States who are of Hispanic origin. The Catholic Church in the United States is also made up of more than 58 ethnic groups from throughout the world, including Asia, Africa, the Near East, and Latin America.

The Catholic Church in the United States has a long history of involvement in refugee and asylum protection, both in the advocacy arena and in welcoming and assimilating waves of immigrants, refugees, and asylum seekers who have helped build our nation. Migration and Refugee Services of USCCB (MRS/USCCB) is the largest refugee resettlement agency in the United States, resettling one million of the three million refugees who have come to our country since 1975. We work with over 100 Catholic Charities across the country to welcome refugees, asylees, and unaccompanied alien children into our communities. Also, the Catholic Legal Immigration Network, Inc. (CLINIC), a subsidiary of USCCB, supports a rapidly growing network of church and community-based immigration programs. CLINIC's network now consists of over 212 members serving immigrants and their families, including asylum seekers in over 300 offices.

The Catholic Church's work in assisting asylum seekers and all migrants stems from the belief that every person is created in God's image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience: "So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt" (Deut. 10:17-19). In the New Testament, the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way: "I was a stranger and you welcomed me." (Mt. 25:35). Jesus himself was an itinerant preacher without a home of his own, and as noted above, he was an asylum seeker fleeing to Egypt to avoid persecution and death. (Mt. 2:15).

In modern times, popes over the last 100 years have developed the Church's teaching on migration. Pope Pius XII reaffirmed the Church's commitment to caring for pilgrims, aliens, exiles, and migrants of every kind, affirming that all peoples have the right to conditions worthy

of human life and, if these conditions are not present, the right to migrate.[1] Most recently, Pope Francis defended the rights of asylum-seekers early in his papacy, traveling to Lampedusa, Italy, to call for their protection. Pope Francis decried the "globalization of indifference" and the "throwaway culture" that lead to the disregard of those fleeing persecution or seeking a better life.

In their joint pastoral letter, *Strangers No Longer: Together on the Journey of Hope, A Pastoral Letter Concerning Migration*," January 23, 2003 (*Strangers No Longer)*, the U.S. and Mexican Catholic bishops further define Church teaching on migration, stressing that vulnerable immigrant populations, including refugees, asylum seekers, and unaccompanied minors, should be afforded protection, without being placed in incarceration while their claims are being considered: "Refugees and asylum seekers should be afforded protection. Those who flee wars and persecution should be protected by the global community. This requires, at a minimum, that migrants have a right to claim refugee status without incarceration and to have their claims fully considered by a competent authority." No. 37. "Because of their heightened vulnerability, unaccompanied minors require special consideration and care." No. 82. Asylum seekers and refugees should "have access to appropriate due process protections consistent with international law." No. 99.

For these reasons, while the Catholic Church recognizes governments' sovereign right to control and protect the border, we hold a strong and pervasive pastoral interest in the welfare of migrants, including asylum seekers and welcome newcomers from all lands. The current immigration system, which can lead to family separation, arbitrary detention, exploitation, and even death in the desert, is morally unacceptable and must be reformed. The aspects of that reform that I will address today relate to asylum-seekers. I will also explore the regional challenge that the nations of the Americas, including the United States, face with the rise in violence in Central American and Mexico.

II. Factors pushing asylum-seekers to leave their home countries

The Catholic Church supports maintaining and enhancing a robust and humane refugee protection system in the Americas. In recent years, there has been an increase in violence in Mexico and Central America. Many flee from Central America to Mexico, with many of those travelling on to the United States.

Indeed, there has been an increase in the number of asylum seekers at the U.S.-Mexican border that can be seen by the steady increase in the number of credible fear determinations by the United States in the last five years and especially by the spike in applications last year: 5,523 in FY2009; 7,848 in FY2010; 10,667 in FY2011; 12,056 in FY2012; and 33,283 in FY2013. AILA Info Net Doc. No. 13110804 (Posted 11/08/13), provided by DHS/USCIS, 10/10/2013.

We are deeply concerned about the root causes that compel persons to flee from their Central American countries for protection. Most observers believe that this recent flight from Central America is due to the increased criminal violence and human rights violations in Central America. The U.S. State Department observes that

> Violence is tragically commonplace, and crime routinely goes unreported, uninvestigated, or unprosecuted. The resulting impunity affects all citizens, but some groups tend to suffer disproportionally, such as community leaders and advocates for human rights and justice, youth, women, and other vulnerable populations. Public officials who ignore

[1] Pope Pius XII, Exsul Familia (On the Spiritual Care of Migrants), September, 1952.

> human rights violations and perpetuate a culture of impunity also undermine the rule of law and rob citizens of their trust in government institutions.[2]

USCCB recently returned from a fact-finding trip to the region to try to better understand these root causes. We found the following:

Violence is permeating all aspects of life in parts of Central America and Mexico. Organized criminal armed groups, drug cartels, human traffickers, and smuggling rings operate with impunity, intimidating and threatening families. Criminal armed groups are present in communities, charging "renta" to families and businesses in order to receive "protection." The governments in the region, lacking resources and the political will, have been unable to control these non-state actors, and in some cases have had to co-exist with them. There are reports that law enforcement and even government officials cooperate with these groups and that corruption is prevalent. Indeed, some of those threatened by the violence of armed criminal groups and feeling pressure to flee from Central America are young people, teenagers. As an example, 95 percent of crimes against youth in Honduras go unpunished. Moreover, a 2012 UNICEF poll concluded that 70 percent of 12 to 17-year old respondents in El Salvador said that intimidation by criminal armed groups and family disintegration had sparked their desire to flee their country.

Our recent USCCB delegation to Central America helped us to see the human impact of that pressure when we visited with a mother of a 17-year old girl. This mother was sitting side-by-side with other mothers and grandmothers in the waiting area of a government migration processing compound in San Salvador, waiting for their children to be processed back into El Salvador after deportation back from Mexico or the United States. Her daughter had fled from El Salvador because she had been threatened by one of these armed criminal groups in San Salvador, yet the mother had been afraid to file a complaint with the police because other youth had been killed for trying to stand up to these groups. In a halting, tearful explanation, she echoed what other mothers and grandmothers had said, "We are desperate to keep our children safe. We know it is dangerous for them to flee but we would rather have our children die trying to escape than to die in front of us in the violence and despair here."

Migrants fleeing violence for safety cannot find protection in Mexico. Migrants who flee Central America cannot find safety in Mexico, as the asylum system does not adequately protect them. The journey north is becoming more dangerous, as migrants are charged passage "fees" by organized crime elements at threat of their lives. Human traffickers flourish as well, imprisoning people for labor or sex purposes. According to a Covenant House report, as many as 80 percent of young women who make the trek north endure some form of sexual violence in Mexico.

A significant number of migrants have valid asylum claims. While the popular perception of many in the United States is that migrants come here for economic reasons, a growing number are fleeing violence in their homelands. The increased number of those requesting asylum from Central America shows a more complex picture, with some traveling to Mexico and some traveling to the United States to join family members in search of security. Denying them asylum and sending them back to the armed criminal groups and drug traffickers persecuting them could

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[2] Fact Sheet, Central America Regional Security Initiative: Citizen Security, Human Rights, and the Rule of Law, Bureau of Western Hemisphere Affairs, U.S. Department of State, available at http://www.state.gov/p/wha/rls/fs/2013/210019.htm

ensure their demise. Among those with valid asylum claims are young people threatened by the armed criminal groups.

III. Policy Recommendations

A. Assuring Robust, Humane Asylum Protection

Mr. Chairman, we understand the desire of you and your colleagues to ensure that the U.S. asylum system provides protection to bona fide asylum-seekers and not those who are trying to take unfair advantage of the system. We share that goal, and believe that the United States currently has the tools to identify and prevent fraud. The U.S. government can protect the American public by using the many tools available to them.

Over the years, Congress has built in many fraud precautions into the U.S. asylum process.[3] These include an in-depth examination of each person's case, an in-person interview or hearing, and rigorous examination of evidence to make sure the applicant meets the strict refugee definition and is not otherwise barred. The asylum seeker signs the application under penalty of perjury, fraudulent applicants are permanently barred, and fraudulent filers, preparers and attorneys can be prosecuted.

In addition, there are numerous bars that prohibit asylum for anyone who has persecuted someone else, committed a particularly serious crime, an aggravated felony, a serious nonpolitical crime abroad, terrorist activity, material support of terrorist activity, or who reasonably presents a danger to the security of the United States. (INA sec. 208(b)(2)(ii-v).

Moreover, federal law requires extensive background and security checks that are tools to identify fraud and safeguard security. (INA sec. 208(d)(5)(A)(i).) The data bases, among others, include the Central Index System (CIS), Deportable Alien Control System (DACs), Automated Nationwide System for Immigration Review (ANSIR), the Interagency Border Inspection System (IBIS) (that has incorporated the National Automated Immigration Lookout System (NAILs), and IDENT database checks. (See Office of International Affairs Asylum Division, *Affirmative Asylum Procedures Manual* (*Asylum Manual*), 2007, updated 2010, pp. 2-6.) The FBI also checks names, birthdates, and fingerprints against their databases, and all asylum applicants are also sent to the CIA to be checked against their databases.

Mr. Chairman, we believe these tools, properly used, are sufficient to ensure that the asylum protection system protects those deserving of relief. Increased penalties and detention for asylum-seekers would not necessarily uncover or deter would-be fraudulent applicants, but would harm those seeking protection.

In addition to using the tools available to identify any possible fraud, we urge the adoption of the following policy recommendations:

Pass Immigration Reform Legislation and Stop the Enforcement-Only Approach to Managing Migration. Since 1993, when the U.S. Border Patrol initiated a series of enforcement initiatives along our southern border to stem the flow of undocumented migrants, Congress has appropriated and the federal government spent about $50 billion on border enforcement, tripling the number of

[3]For more information, see Anti Fraud and Security Safeguards in the Asylum System at http://www.humanrightsfirst.org/wp-content/uploads/pdf/ANTI-FRAUD_AND_SECURITY_SAFEGUARDS_IN_THE_ASYLUM_SYSTEM.pdf.

Border Patrol agents and introducing technology and fencing along the border.

During the same period, as Congress has enacted one enforcement-only measure after another, the number of undocumented in the country has more than doubled and, tragically, nearly 8,000 migrants have perished in the desert of the United States. One of the more troubling and severe enforcement efforts that has been implemented in the name of protecting the border, Operation Streamline, has criminalized unauthorized entry and re-entry of immigrants beyond the civil immigration system, placing them in the U.S. federal criminal justice system. The sheer volume of individuals detained under this program has overwhelmed the U.S. court and prison system and has led to procedural due process violations in the courts and substantive due process violations related to arbitrary detention.

As you may know, Mr. Chairman, the U.S. bishops have expressed concern with the border fence that has been built along our southern border as well as the ongoing implementation of Operation Streamline. We do not believe these approaches will solve the problem of illegal immigration and could send migrants, including asylum seekers, into even more remote regions of the border and into the hands of unscrupulous smugglers. They are even more inappropriate and ineffective as deterrent to asylum seekers fleeing violence and human right violations.

Rather, we would support your consideration of immigration reform legislation which would include 1) a path to citizenship for the 11 million in this country; 2) a worker program to permit low-skilled workers to migrate safely and legally to work in important industries in this country; 3) reforms in the family-based immigration system so that families are reunited in an expeditious manner; 4) restoration of due process protections in immigration law; and 5) policies which address the root causes of migration.

Pursue alternatives to detention. Mr. Chairman, we are deeply concerned with the status quo when it comes to the detention of aliens who are in removal proceedings, especially vulnerable migrants, such as asylum seekers. We applaud DHS for their recent initiatives to reform the detention system, but we believe that statutory change is necessary.

In April 2013, the bi-partisan U.S. Commission on International Religious Freedom (USCIRF) found that the U.S. often detains asylum seekers in inappropriate jail and jail-like facilities. See *Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms*, U.S. Commission on International Religious Freedom, April 2013.

In this regard, we recommend the following policy reforms:

- end mandatory detention and the nationwide bed mandate to restore discretion to immigration officials and judges to release individuals who are not a flight risk and do not pose a risk to public safety, particularly asylum-seekers;
- establish and fund nationwide, community-based alternatives to detention programs;
- improve standards for detention conditions, by promulgating regulations that apply to all facilities used for U.S. immigration detention, making the detention system truly civil in nature and including prompt medical care in compliance with accreditation requirements, and appropriate standards through regulations for families, children, and victims of persecution, torture, and trafficking;
- provide access to legal counsel for those in asylum and immigration proceedings;

- provide funding and authorizations for legal orientation programs nationwide by the DOJ/EOIR to facilitate more just and efficient proceedings;

- increase funding for adjudication by DHS/CIS and by DOJ/EOIR so that backlogged cases are adjudicated and there are sufficient resources to adjudicate ongoing cases in a timely manner; and

- establish a new Office of Detention Oversight at the Department of Homeland Security.

End Expedited Removal Reform or At Least Pursue USCIRF Reforms. Mr. Chairman, we are also concerned with the ongoing expansion of the Expedited Removal process. Those who come to our shores or borders in need of protection from persecution should be afforded an opportunity to assert their claim to a qualified adjudicator and should not be detained unnecessarily. The expansion of "expedited removal," a practice that puts *bona fide* refugees and other vulnerable migrants at risk of wrongful deportation, should be halted. At a minimum, strong safeguards, such as those suggested in the 2005 and 2013 reports by the bi-partisan U.S. Commission on International Religious Freedom (USCIRF), should be instituted to prevent the return of the persecuted to their persecutors. We urge the subcommittee to include these reforms in any reform legislation.

Pursue Fairer Access to Asylum by Revising Unfair, Inhumane Bars and Restrictions. We also believe that the definitions of terrorist activity, terrorist organization, and what constitutes material support to a terrorist organization in the Immigration and Nationality Act (INA) were written so broadly and applied so expansively that thousands of refugees and asylum-seekers are being unjustly labeled as supporters of terrorist organizations or participants in terrorist activities. These definitions have prevented thousands of bona-fide refugees from receiving protection in the United States, as well as prevented or blocked thousands of applications for permanent residence or for family reunification.

We commend the recent actions by the Department of Homeland Security to exercise their exemption power under the law, and encourage them to take additional steps with exemptions. We also urge the committee to reexamine the overly broad definitions mentioned above and to consider altering them in a manner which preserves their intent to prevent actual terrorists from entering our country without harming those who are themselves victims of terror—refugees and asylum-seekers.

Repeal the one-year asylum deadline. We ask the committee to repeal the one-year filing deadline on asylum applications, which has prevented many asylum-seekers from obtaining immigration relief. Often it takes time for asylum-seekers to adjust to the United States and obtain legal assistance to file claims. Many are detained and are unable to access the asylum system.

Restore Due Process Reforms. Finally, we urge the committee to reexamine the changes made by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which eviscerated due process protections for many immigrants and some asylum seekers. We urge you to restore administrative and judicial discretion in removal proceedings so that families are not divided; repeal the 3-and 10-year bars to re-entry, and revisit the number and types of offenses considered as aggravated felonies as a matter of immigration law.

B. Assure Robust, Humane Refugee Protection in Mexico

Mr. Chairman, the USCCB is also very concerned with the plight of Central American asylum seekers in Central America and Mexico. With this in mind, we feel strongly that the following U.S. support should be provided to Mexico:

- Work closely with UNHCR to support Mexico to strengthen its asylum system, especially to protect most vulnerable asylum seekers in Mexico, including at-risk women, at-risk children, unaccompanied children, and victims of torture, trafficking and gender-based violence.

- Work closely with UNHCR to support Mexico to establish and implement refugee processing to identify, screen, and pursue durable solutions for Central Americans fleeing to Mexico, including resettlement to the United States. This should also include a capacity to identify unaccompanied refugee children, to conduct Best Interest Determinations of these children, and to pursue durable solutions for them, including resettlement to the United States.

- A transnational family reunification approach should be adopted when deciding on durable solutions in the best interest of unaccompanied children. This includes family tracing and assessment, through international home studies, of the viability of all family reunification options, regardless of geography, for reunification.

- Return and re-integration services in countries of origin should be supported by the U.S. Government, with clear authority and appropriations given to the appropriate agency.

C. Investigate and Address the Root Causes of Migration

As the bishops have also taught, all persons have the right not to have to migrate. All should be able to remain in their homeland and find there the means to support themselves and their families in dignity. Migration flows should be driven by choice, not necessity.

It is clear that, beyond economic reasons, migrants, including children, are migrating to escape persecution and to receive protection. First, efforts to address the underlying causes of violence in the border regions must continue. Policies must reflect the importance of controlling the illicit drug trade, the centrality of curbing corruption at every level of national life, and the need to curtail the arms trade, weapons and human trafficking, as well as the resultant violence that accompanies these illicit activities. Second, the U.S. government should partner with governments in Central America to address activity of armed criminal groups. This would not only include community policing assistance, but also help with improving schools and economic opportunities. Violence is allowed to flourish in a community when there are no other alternatives to help persons to improve their futures.

Finally, the United States should assist Central American governments in improving their child welfare systems, so that children receive care and protection, as well as funding programs which provide adults and youth with education and skills training, so they can find a future in their homelands. These are prevention programs which could help stem migration to Mexico and the United States.

IV. Conclusion

Mr. Chairman, I would like to thank you for the opportunity to testify today. In conclusion, we believe that the United States should remain a safe haven for vulnerable populations who are in need of safety from harm. We can continue that honored tradition without sacrificing the integrity of our asylum system.

Thank you for your consideration of our views.

Lutheran Immigration and Refugee Service

LIRS Statement for Hearing: "Asylum Fraud: Abusing America's Compassion?"
House Judiciary Committee, Subcommittee on Immigration and Border Security
February 11, 2014

Lutheran Immigration and Refugee Service (LIRS), the national organization founded by Lutheran Christians to serve uprooted people, is committed to helping asylum seekers and torture survivors access the protections to which they are legally entitled. Following God's call in the Judeo-Christian Scriptures to uphold justice for the sojourner, LIRS advocates to ensure newcomers in the United States are treated fairly and humanely. With 75 years of experience in service and advocacy, LIRS is a leading voice on protecting vulnerable migrants and refugees, including asylum seekers.

LIRS urges the United States government to maintain robust protections for asylum seekers and others fleeing persecution and to avoid using immigration detention unless it is determined to be necessary based on the use of prosecutorial discretion in individualized assessments. We further support increasing the use of community-based alternatives to detention for migrants that do not unnecessarily deprive individuals of their liberty, while still meeting the government's need to ensure compliance. This will ensure that we live up to our legal and moral obligation as a country that takes pride in offering refuge to people fleeing persecution.

"Our asylum laws act as a critical lifeline for vulnerable migrants who seek safety and a new life here in the United States," said LIRS President and CEO Linda Hartke. "Restricting our asylum system would not only fail to honor the courage of asylum seekers, but also would betray our strong history as a nation of welcome."

Obligations to Protect Individuals Fleeing Persecution

The United States Government is urged to uphold its obligation to provide protection to individuals fleeing persecution in their homelands. This obligation is found in international treaties the United States has ratified, such as the United Nations Refugee Convention and the Convention against Torture, as well as in domestic immigration law. Beyond these legal obligations, our nation has a long and proud history of living out the moral imperative to protect the most vulnerable newcomers and grant the freedoms we hold as inalienable rights. LIRS considers it a privilege to be a part of this process with the people we serve.

There are numerous safeguards and procedures that strengthen the nobility of the domestic asylum system and ensure its integrity. These safeguards include mandatory biographic and biometric checks of

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applicants against various federal databases and dedicated, well-trained, full-time fraud detection officers. Additionally, current laws prohibit the granting of asylum to any person who has engaged in terrorist activity or otherwise poses a threat to the security of the United States.

Erecting new barriers to protection within the asylum system is unnecessary and may dangerously impede our obligations to protect bona fide asylum seekers.

Detention of Asylum Seekers

The United States detains asylum seekers, refugees, torture survivors and survivors of gender or sexual-based violence every day in jails or jail-like settings. These vulnerable men and women are among thousands of migrants apprehended by the Department of Homeland Security (DHS) each year and sent to immigration detention until they win their cases or are deported to their countries of origin. Each day, the United States government detains approximately 34,000 individuals for immigration purposes.

Under current immigration law, arriving asylum seekers are subject to immigration detention pending a determination by an Asylum Officer regarding whether they have a "credible fear" of persecution as a result of their race, religion, ethnicity, political opinion or membership in a particular social group.

Contrary to popular opinion, individuals found to have a "credible fear" of persecution **are still subject to mandatory detention** for further consideration of their asylum claim by an immigration judge; those determined to lack credible fear of persecution are subject to removal without further hearing review. If an asylum seeker is found to have credible fear, Immigration and Customs Enforcement (ICE) may exercise its prosecutorial discretion to release the asylum seeker on parole pending immigration proceedings. The standards for parole are high, and asylum seekers may only be paroled on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefits," and must be determined to present no security or flight risks.

Harmful Impact of Current Laws, Policy and Practice

Immigration detention negatively impacts asylum seekers in multiple ways. The psychological harm of detention on a survivor of persecution or torture has been well-documented.[1] In some situations, the hardship of detention may lead a bona fide asylum seeker to return to a country where he or she fears persecution or torture.[2] And, detention impedes full, fair adjudication of valid claims by creating obstacles to obtaining legal counsel, hindering the ability to gather evidence in support of one's claim, and often forcing participation in court proceedings over a tele-video connection rather than in person.

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[1] "Tortured & Detained: Survivor Stories for U.S. Immigration Detention", Center for Victims of Torture, The Unitarian Universalist Service Committee, and the Torture Abolition and Survivor Support Coalition, International, Nov. 2013; "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers", Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, June 2003.

[2] "Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy", Lutheran Immigration and Refugee Service, Oct. 2011 at 22.

The shortcomings and overly harsh response of the current system are illustrated by the following story of an Afghan asylum seeker who fled persecution by the Taliban on account of his assistance to the U.S. Army.

> To protect his family and save his own life, **Ahmad fled his home country of Afghanistan after being targeted by the Taliban as a "U.S. loyalist" for providing translation assistance to the U.S. Army in 2002**. When he came to the United States seeking protection and attempted to enter with a false passport, **he was detained. He claimed asylum and was found to be eligible**; he met the refugee definition, he was credible, and he established a well-founded fear of persecution if he returned to Afghanistan. Nevertheless, an immigration judge denied his initial asylum application because he did not attempt to relocate within Afghanistan before escaping to the United States. Ahmad appealed his case. Because he was considered an "arriving alien," he was not eligible for a custody determination before a judge. **As an asylum seeker who had established a credible fear of persecution, he was eligible for parole, but ICE determined he was a flight risk because he lacked community ties. Ahmad remained in detention for more than a year before he was granted asylum and released from detention.**[3]

Individuals who receive legal assistance through non-governmental organizations or information through the Department of Justice's Legal Orientation Program are able to overcome some of the harmful effects of detention. Migrants in detention must represent themselves in immigration court far too often- at least 80 percent of the population which includes incredibly vulnerable individuals, such as survivors of torture, elderly persons, survivors of sexual and gender-based violence, and many persons with serious mental health issues lack legal representation. Immigration detention facilities are often located in areas far from detainees' family, attorneys, community support groups, places of worship, and other social services providers.

The Department of Justice's Executive Office for Immigration Review currently operates the Legal Orientation Program (LOP) in partnership with the Vera Institute of Justice and non-governmental organizations to provide detained migrants at 25 of the approximate 250 detention facilities across the United States with basic legal information about the immigration system and their rights. While not a substitute for legal representation, LOP helps migrants to make informed decisions regarding their cases. LOP helps to mitigate the isolation of detention by providing detainees with basic information on forms of relief from removal, how to accelerate repatriation through the removal process, how to represent themselves without an attorney, and how to obtain legal representation. LOP programs have also been shown to reduce case processing times and costs.

The case below demonstrates the benefits of LOP programs to non-citizen detainees and to the improved efficacy of immigration courts.

> Since 1991, Somalia has been enduring an ongoing civil war. In the late 1990s, Mr.

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[3] Unlocking Liberty at 42.

Mukatr Allie, a young Somali boy, was living with his uncle because he had a medical condition that could not be addressed in his village. He returned to his village and discovered that his house had been ransacked. His father and three brothers had been killed. He didn't know where his mother or his eight other siblings were. His uncle then abandoned him, leaving him all alone. At the encouragement of a neighbor, he escaped to Nairobi. He remained there for a few years, but faced repeated harassment by the local police.

He fled again in search of safety and protection passing through Europe, the Caribbean and South America. In April 2010, at the age of 21, he crossed the U.S.-Mexico border. Mr. Allie would later say, "I didn't feel safe. There was no justice, a lot of corruption. My original idea wasn't to come to the United States. I just needed to get out." DHS officials apprehended and transferred him to the Northwest Detention Center, a privately run jail in Tacoma, Washington.

Mr. Allie was afraid to return to Somalia because he was opposed to Al Shabaab, an Islamic insurgent group that has been designated as a terrorist organization by the United States government. Al Shabaab controls central and south Somalia. Mr. Allie thought that he would be targeted if he were deported.

The Northwest Immigrant Rights Project (NWIRP), a member of LIRS's Community Support Initiative network, met Mr. Allie while providing LOP presentations. NWIRP, the local LOP provider, recognized that he was eligible for asylum. In June 2010 Mr. Allie filled out and submitted his own asylum application and LOP connected him with pro bono legal counsel for further assistance in court proceedings. In his August 2010 asylum hearing, an immigration judge approved his asylum application. He was released from jail, nearly 5 months after arriving to the United States.

Had Mr. Allie not received basic legal information through LOP, he may not have known that he was eligible for asylum. Moreover, if he did not know about his eligibility for asylum and how to fill out the application, he likely would have asked the immigration judge for more time to determine what his legal option – wasting valuable court time and resources.

Conclusion: The Need for Prosecutorial Discretion

Federal immigration laws and policies should not use a blanket approach for reaching detention determinations. Such one-size-fits-all enforcement methods have led to more individuals being detained than is necessary to meet the ultimate goal of immigration detention—compliance with immigration proceedings. Immigration officials instead should utilize discretion based on individual circumstances when making detention determinations. Additionally, individuals should be screened for eligibility for community-based alternatives to immigration detention. By providing a system of holistic care through case management, legal assistance, housing, medical care, educational opportunities, vocational training, spiritual support, and strong community support, these alternatives to detention facilitate integration and healing from trauma, and encourage individuals to fulfill ongoing legal expectations.

The use of prosecutorial discretion is a longstanding and non-controversial principle of law enforcement that allows officers and agents to prioritize their actions and expenditures and that both the Supreme Court and Congress have recognized as a legitimate exercise of executive authority. To achieve principles of good governance, the exercise of discretion must be consistently and transparently utilized.

For additional information, please see our fact sheet on asylum and asylum-seekers or contact Nora Skelly, LIRS Assistant Director for Advocacy at nskelly@lirs.org or 202.626.7934.

Church World Service statement for the Congressional Record pertaining to the House Judiciary Committee Hearing on Tuesday, February 11, 2014

Church World Service (CWS), a 67-year old humanitarian organization, affirms the value that the asylum system brings to persons fleeing persecution, and to this nation as a whole. Since 1946, CWS has helped more than 800,000 refugees, asylees and entrants find a new life in the United States.

The United States has a rich history of opening its doors to those fleeing persecution and violence. We urge Congress to safeguard this tradition by ensuring that the U.S. asylum system is accessible to individuals who need protection and reflects the humanitarian principles that have made the United States a beacon of hope for so many.

The standards for a grant of asylum are narrow, strict and rigorous under U.S. immigration law. Over the years, the U.S. government has continuously fine-tuned the system to curb fraudulent and frivolous claims and maximize domestic security, while protecting bona fide applicants. In 1996, the Illegal Immigrant Reform and Immigration Responsibility Act (IIRIRA) made significant changes to the asylum system, including strict security provisions. In 2005, the Real ID Act again increased standards of proof for asylum seekers.

Today, the Department of Homeland Security (DHS) has strong anti-fraud mechanisms to ensure the integrity of the asylum system, including but not limited to:

- Multiple identity and security checks in inter-agency databases
- Mandatory FBI biometric checks in multiple databases of the applicant's fingerprints and photographs
- Additional biographical screening by the National Counterterrorism Center (NCTC) since August 2011
- Mandatory supervisory review of all decisions; random case assignment; fraud detection and inter-agency national security teams; trained document experts; forensic testing of documents; and interpreter monitors

Despite recent increases, between 1996 and today, there has been a large decrease in overall asylum claims: 201,170 individuals claimed asylum in 1996, but only 63,829 in 2009. Time-series data shows that asylum claims and approval numbers have cycles in which they increase and decrease, usually tied to crises that cause people to seek protection. The recent increase in asylum claims generally represents a rise in persecution and violence due to economic, social and political changes in countries of origin.

Reforms should be enacted to strengthen the system, reduce backlogs, and ensure efficient processing. Immigration courts and other processing bodies need adequate resources in order to adjudicate claims in a timely manner. Attempting to reduce backlogs by limiting access to protection, however, would be inconsistent with the purpose of the asylum system and our values as a nation. As the first step of the asylum process, the credible fear screening process is a critical safeguard designed to assess individuals' need for protection to avoid returning them to dangerous situations in which they could be killed, tortured and subject to increased persecution. Additional restrictions to the credible fear process would inevitably screen out bona fide applicants. As changes are considered to the credible fear screening or asylum system overall, we must ask if it is acceptable for our nation, founded on principles of freedom and equality, to deny a victim of human trafficking, a persecuted religious minority, or a tortured pro-democracy activist an opportunity to have their story heard and seek protection.

CWS is committed to working with all members of the House and Senate to improve access to the life-saving protection mechanism that is the U.S. asylum system. To ensure that the United States is meeting our international obligation and living up to our best potential as a nation, it is crucial that any reforms made to this system do not create barriers to protection for individuals who would face persecution and violence should they return to their home countries.

HIAS

Welcome the stranger.
Protect the refugee.

Statement submitted to the Subcommittee on Immigration and Border Security, Committee on the Judiciary of the U.S. House of Representatives Hearing on

"Asylum Fraud: Abusing America's Compassion?"

February 11, 2014

Throughout our history, America has been defined by our generosity toward those who seek a safe haven from oppression. An asylum system that is fair, effective and humane honors our country's history and reflects the deeply-held American tradition of offering a chance at a new beginning to those who seek safety and freedom.

In the aftermath of World War II, when the price for keeping doors closed to refugees was starkly clear, the international community adopted the 1951 United Nations Convention relating to the Status of Refugees, which to this day defines who is a refugee and what legal protection a refugee is entitled to receive and is the basis for U.S. refugee and asylum law.

The United States incorporated these protections into our own laws, and they have been the foundation of our asylum system for decades. Actions by Congress to curtail access to asylum in the United States would be inconsistent with international and U.S. law and send a dangerous message to countries around the world that are likely to follow our lead and close their doors to asylum seekers.

HIAS believes that national security and a humane and fair asylum system are compatible. National security is not enhanced when our anti-terrorism laws needlessly deny protection to refugees and asylum seekers who have no real connection to terrorism and who are fleeing some of the most brutal regimes and violent conflicts on earth.

A critical purpose of the Immigration and Nationality Act is to give refuge to persons fleeing persecution but not to those who pose a threat or danger to the United States. In discussing the REAL ID Act, Representative Sensenbrenner stated that the intent of Congress in passing the USA PATRIOT Act and the REAL ID Act was to keep out persons who intended to cause harm to the United States while "protecting honest asylum seekers."

The terrorism-related inadmissibility grounds – or "TRIG" – that were expanded by the USA PATRIOT Act and the REAL ID Act, bar any individual who has provided what the law terms "material support" to terrorists from entering the United States. Leading organizations in the Jewish community were at the forefront of efforts to enact a tough ban on material support for terrorist organizations as well as sanctions against the states that sponsor them. However, for more than 10 years, the TRIG provisions have been used to exclude *victims* of terrorism, some whose very struggle to be free now makes them inadmissible to the United States.

Terrorism as defined by law includes acts intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion. Common definitions of terrorism do not include paying a ransom to obtain the release of a kidnapped child. Common definitions of terrorism do not include selling food at a restaurant, hosting family members for a night, or treating the wounded.

Common definitions of terrorism also do not include the use of justifiable force to repel attacks by forces of an illegitimate regime. The concern underlying the creation of the Tier III category of "non-designated" terrorist organizations was to give the government the ability to deal with newly emerged or newly discovered dangerous groups and their supporters without having to wait for a designation process. The U.S. government should not exclude people for support to or membership in "Tier III" organizations that it would never designate as terrorist organizations because their activities fall within the scope of legitimate self-defense and pose no danger to the security of the United States.

The Bush Administration attempted to minimize the impact of these broad provisions on refugees and asylum seekers by issuing exemptions for individuals who provided support to Burmese religious and ethnic minority groups who resisted the brutal Burmese regime. In 2008, Congress legislatively exempted these Burmese groups from the TRIG bars, and also exempted Cubans who provided support to individuals and groups who fought against Fidel Castro, Hmong and Montagnards who fought with U.S. forces during the Vietnam War, and members of the African National Congress.

In addition to exempting certain groups, in 2008 Congress granted the Administration additional discretionary authority to issue exemptions in cases where the TRIG bars were having the effect of excluding refugees and asylum seekers unfairly labeled as "terrorists." This provision had bipartisan support in the House and Senate and was negotiated by Senators Patrick Leahy and Jon Kyl.

In the following years, the Obama Administration issued exemptions that have authorized Department of Homeland Security officials, in their discretion, to exempt individuals who provided "support" or engaged in other activity under duress, provided medical care, or were members of certain designated groups – including the Iraqi uprising. These were all carefully considered, reasonable and appropriate steps to help resolve the longstanding TRIG problems

that have barred so many asylum seekers and refugees from obtaining protection and reuniting with family in the United States.

Recent actions by the Administration to grant discretionary authority to DHS adjudicators are consistent with both national security and providing protection to individuals who seek asylum in the United States. Last week, the Obama administration issued exemptions authorizing DHS adjudicators to exempt those who provide "insignificant" assistance, who engaged in certain routine commercial or social transactions, or who provided certain humanitarian assistance to an undesignated (Tier III) terrorist group. Exemptions can also be issued for those who were pressured to provide support.

In order to qualify for either of these exemptions, an applicant must pass all relevant background and security checks, fully disclose to the U.S. government all information about the activity, and not have provided material support to activities that he or she knew or reasonably should have known targeted noncombatants, U.S. citizens, or U.S. interests. There are numerous other requirements and limitations imposed on DHS adjudicators that will ensure that only those who merit an exemption receive one, including that the individual poses no danger to the safety and security of the United States.

Shockingly, under today's laws, Jews who bravely resisted and survived Nazi terror would be excluded from refuge in the United States. Under current policy, the Warsaw ghetto uprising would have been considered "terrorist activity" because it involved the use of weapons against persons or property for reasons other than for "mere personal monetary gain."

Congress' failure to amend the overbroad terrorism definitions and TRIG provisions that bar asylum seekers and refugees who have no connection to terrorism under the common understanding of the term, along with the Administration's failure to fully use the authority granted by Congress in 2008 to grant exemptions to asylum seekers and refugees who pose no threat to the United States, undermine America's leadership in the realm of refugee protection and could ultimately undermine the international regime of refugee protection itself. In addition, U.S. foreign policy interests are ill-served when we suggest to oppressive governments and brutal terrorist groups that their victims are considered "terrorists" by the United States rather than refugees .

Even if the Administration fully exercises its authority under the law—which to date it has not—the law will continue to bar deserving refugees from admission to the United States. HIAS strongly believes that the Administration and Congress should work together to immediately amend the law to ensure that innocent victims are not branded as "terrorists" and refused safe haven.

Submitted by

Leslie E. Vélez
Senior Protection Officer
United Nations High Commissioner for Refugees

To

House Committee on the Judiciary
Immigration and Border Security Subcommittee
Hearing on

"Asylum Fraud: Abusing America's Compassion?"

11 February 2014

Mr. Chairman, Ranking Member Lofgren, Members of the Subcommitee on Immigration and Border Security of the House Committee on the Judiciary, thank you for the opportunity to submit a statement on today's hearing on fraud in the asylum system.

The Office of the United Nations High Commissioner for Refugees (UNHCR) was established on December 14, 1950 by the United Nations General Assembly. UNHCR, as the UN Refugee Agency, is mandated to lead and co-ordinate international action to protect and find solutions for refugees around the world. Its primary purpose is to safeguard the rights and well-being of those fleeing persecution. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another country, with the option to return home voluntarily, integrate locally or to resettle in a third country. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to the problem of refugees.[1] With more than 60 years as the global authority on refugee protection, we also bring to bear notable experience and expertise in this area. Under its expertise and mandate, UNHCR has produced volumes of procedural and substantive guidance on refugee status determinations. We have a particular interest in the subject matter raised by this hearing.

The United States has a proud and long-standing tradition of protecting and welcoming victims of persecution. As members of this Subcommittee have noted, the United States has long stood firm as a beacon of hope for the persecuted since the nation's founding. Ensuring the integrity of its asylum system is essential to keeping that beacon lit. This includes having in place robust procedures to ensure that those fleeing persecution because of their religion, race, political beliefs or other grounds can access international protection.

The United States' asylum procedures are guided by the foundational responsibilities derived from international and regional refugee instruments, notably its obligations as a Member State to the 1967 Protocol Relating to the Status of Refugees, which expands the definition of a refugee and incorporates the key substantive provisions of the 1951 Convention Relating to the Status of Refugees (the Refugee Convention), international human rights law and humanitarian law, as well as relevant UNHCR Executive Committee Conclusions.[2] The United States is also a

[1] UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), at: http://www.unhcr.org/refworld/docid/3ae6b3628.html. UN General Assembly, Protocol Relating to the Status of Refugees, 30 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: http://www.unhcr.org/refworld/docid/3ae6b3ae4.html. Paragraph 8 of UNHCR's Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees, whereas the 1951 Convention relating to the Status of Refugees ("the 1951 Convention") and its 1967 Protocol relating to the Status of Refugees ("the 1967 Protocol") oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR's duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). UNHCR's supervisory responsibility extends to all States Parties to either instrument, including the United States (U.S.).

[2] Refugee Act of 1980, 8 U.S.C. 1522, as amended, Public Laws 96-212, 97-363 and 99-605. Notably Conclusion No. 8 (XXVIII) 1977, on the determination of refugee status (A/AC.96/549, para. 53.6); Conclusion No. 30 (XXXIV) 1983

founding and influential member of UNHCR's Executive Committee[3] (ExCom), which holds the responsibility of issuing Conclusions to guide the policies, practices and positions of UNHCR.

In turn, UNHCR, under its mandate, is legally responsible for advising the United States regarding the procedure and the safeguards its system contains. The intention is to assist the United States in identifying and implementing the core elements necessary for fair and efficient asylum decision-making in keeping with international refugee protection principles. This includes UNHCR's position with regard to fraudulent asylum claims.

Detecting and deterring fraudulent asylum claims is a legitimate and shared concern of UNHCR and countries of asylum like the United States.

UNHCR has long recognized that Member States to the Refugee Convention, including the U.S., have legitimate concerns that their asylum systems be able to respond effectively to misuse. Fraudulent claims utilize valuable resources that should otherwise be dedicated to ensuring access to protection for the vast majority of asylum-seekers who are not seeking to abuse the asylum system. These claims also foster negative perceptions of asylum-seekers, jeopardizing the goodwill and welcome in receiving countries and communities. In this way, fraud in any asylum system jeopardizes refugee protection. For these reasons, well-developed and resourced procedures to detect fraudulent claims are a hallmark of any robust asylum system. Critically, though, such measures must include vigorous procedural safeguards to ensure that refugees are not denied access to asylum procedures and protection.[4] Failure to provide such safeguards "may result in flawed decisions which will defeat the objective of a fair and efficient asylum procedure and may prolong proceedings before the appeal instance."[5]

As a refugee status adjudicator, UNHCR also understands the profound importance of the detection and prevention of fraud in the asylum system. As of 2007, UNHCR conducted refugee status determinations (RSD) in some 75 countries, making decisions for 48,745 people. UNHCR has incorporated fraud detection in conducting our own refugee status determinations. We also provide technical assistance to countries in balancing international protection and fraud detection in their own asylum procedures.

In our experience, cases that may seem to indicate fraud will not, in fact, be fraudulent. This is particularly true in the context of use of fraudulent identity documents to facilitate an asylum-seeker's flight to safety. UNHCR has long recognized that asylum-seekers are often compelled

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(A/AC.96/631, para. 97.2), on the problem of manifestly unfounded or abusive applications for refugee status or asylum.

[3] For the current composition of UNHCR's Executive Committee, *see* http://www.unhcr.org/pages/49c3646c89.html

[4] *See* UN High Commissioner for Refugees (UNHCR), *A Thematic Compilation of Executive Committee Conclusions, 6th edition, June 2011*, Conclusions 28 and 30, June 2011, available at: http://www.refworld.org/docid/4f50cfbb2.html

[5] ¶11, http://www.refworld.org/pdfid/4bf67fa12.pdf.

to use false identity documents to flee their countries.[6] This is the result of either inability to obtain the documents in time for flight or the fact that it is the asylum-seeker's own government that she fears.

Fair and efficient asylum procedures represent the best way to protect against fraudulent asylum claims.

The United States has recognized that

> while measures to deal with manifestly un-founded or abusive applications may not resolve the wider problem of large numbers of applications for refugee status, both problems can be mitigated by overall arrangements for speeding up refugee status determination procedures, for example by: (i) allocating sufficient personnel and resources to refugee status determination bodies so as to enable them to accomplish their task expeditiously, and (ii) the introduction of measures that would reduce the time required for the completion of the appeals process.[7]

Fair and efficient procedures are an essential element in the full and inclusive application of the Refugee Convention. They enable States to effectively identify those who should benefit from international protection under the Refugee Convention, and those who should not. The U.S. has acknowledged their importance by recognizing the need for all asylum-seekers to have access to them.[8]

The United States asylum system stands out globally in its range of anti-fraud detection measures. Moreover, the consequences for submitting a fraudulent claim in the United States are high: a permanent bar to future immigration benefits. The largest challenge to these anti-fraud measures, though, is insufficient resources to quickly and fairly adjudicate claims for asylum. The U.S. House of Representatives Committee on the Judiciary Committee consistently recognizes the burden that substantial backlogs in the U.S. asylum adjudication system – both at the asylum officer and at the immigration court levels. Many asylum-seekers wait years for a final determination in their cases – fostering uncertainty and limbo for those in need of protection, and providing an incentive to those who would seek to abuse the asylum system for purposes counter to refugee protection. Providing adequate resources to asylum adjudicators

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[6] "As to the use of forged or counterfeit documents, it is not the use of such documents which raises the presumption of an abusive application, but the applicant's insistence that the documents are genuine. It should be borne in mind in this regard that asylum-seekers who have been compelled to use forged travel documents will often insist on their genuineness until the time they are admitted into the country and their application examined.

[7] UNHCR, *A Thematic Compilation of Executive Committee Conclusions, 6th edition, June 2011*, Executive Committee Conclusion 30, June 2011, available at: http://www.refworld.org/docid/4f50cfbb2.html

[8] Conclusion No. 81 (XLVIII) 1997, para. (h) (A/AC.96/895, para. 18); Conclusion No. 82 (XLVIII) 1997 para.(d)(iii) (A/AC.96/895, para.19); Conclusion No. 85 (XLIX), 1998, para. (q) (A/AC.96/911, para. 21.3). In mass influx situations, access to individual procedures may not, however, prove practicable.

promotes fair and efficient processes that deter fraudulent claims while protecting those in need.

Fraudulent claims for protection and failed claims for protection should not be conflated.

UNHCR recognizes that some unscrupulous or desperate people may attempt to knowingly deceive the asylum system to try to gain status by fabricating a claim for protection. Other asylum-seekers legitimately fear return to their home countries but are nonetheless unsuccessful in presenting their claim. This may be the result of a range of factors: the situation they fear falling outside the scope of refugee protection; a lack of legal orientation or representation; and the limitations that detention places on an asylum-seeker's ability to prepare her claim, among others. It is important to note that this circumstance is distinct from those who submit fraudulent claims for refugee protection. The former has truthfully submitted a claim for international protection but has not met her burden, while the latter has attempted to abuse the system with a false claim for protection. A robust, fair and well-resourced asylum system would identify both claims as not in need of international protection, and would adopt distinct procedures for dealing with each type of claim.

Responses to an influx of asylum-seekers from a specific country or region of the world must be considered through an international protection lens.

In accordance with international refugee protection obligations, increases in asylum-seekers from specific countries or regions of the world must be viewed in light of the United States' international protection obligations. Gaining a complete protection picture by analyzing country conditions to identify potential forced displacement dynamics, or other situations of peril such as human trafficking, is a critical first step in adopting law and policies in response to an increase in asylum claims.

As an adjudicator of claims for international protection, UNHCR must investigate and understand the dynamics of displacement underlying asylum-seekers' claims for protection. This is the case in our large scale operations like our response to the Syrian refugee crisis, as it also in countries like the United States that receive significant but much lower numbers of asylum-seekers. UNHCR recently informed the House Judiciary Committee of its work to understand the root causes of the increased displacement of Central American and Mexican women, men and children. UNHCR is examining and documenting the security situation in the region and asylum-seekers' reasons for leaving.

UNHCR's offices in Central America, Mexico, the United States of America and Canada have noted the deterioration of security and high levels of violence in Central America as a major driver of regional displacement. Our first study on this identified the emergence of new forms of displacement caused by new forms of violence resulting from the increase in violence at the

hands of transnational, armed criminal organizations.[9] In it, UNHCR found that violence, and the threat of it, forcibly displaces an increased number of individuals from Central America and Mexico. Individuals, families and children are also increasingly fleeing other conditions such as political unrest and lack of meaningful redress for abuses committed.

While nefarious parties may attempt to abuse the asylum system to their favor, it should not be overlooked that growing and very legitimate protection claims are being identified among the Central American and Mexican populations throughout the region. Consistent with international obligations under the Refugee Convention and its 1967 Protocol, those claims must be heard. In this context, many are in need of accessing fair and efficient asylum procedures. It is critical that any law or policy response to this increased displacement contain robust, well-resourced protection screenings and determinations.

Conclusion

UNHCR profoundly appreciates the United States' long-standing global leadership in refugee protection. The American people stand as an example in compassion and generosity toward those fleeing persecution, and that example does not go unnoticed by other countries around the world on how these populations are treated. UNHCR understands and supports the United States' need to prevent, detect and discourage fraudulent claims, though any measures taken to do so must also weigh the profound obligation to ensure that asylum-seekers have meaningful access to asylum procedures. Striking this balance is a matter of life and death.

Fraud detection, more efficient procedures, and better-informed asylum decisions and policies are good practices in the United States that would discourage abuse of the system and encourage improvement to the institution of asylum the world over. Any negative response and increased barriers to meaningful asylum procedures would very likely have the opposite effect, leaving those in need of international protection without it and those who would defraud the asylum system seeking other avenues for doing so. Understanding broader regional security and protection dynamics and ensuring adequate resources for a fair and efficient asylum system is the best prescription for preventing fraud and ensuring the integrity of an asylum system.

[9] UNHCR and International Centre for the Human Rights of Migrants, "Forced Displacement and Protection Needs produced by new forms of Violence and Criminality in Central America," May 2012, *available at* http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8932.pdf?view=1 (in Spanish).

Submission to the U.S. House of Representatives Judiciary Subcommittee on Immigration and Border Security:
"Asylum Fraud: Abusing America's Compassion?"
Tuesday, February 11, 2014

Introduction:

The Center for Victims of Torture (CVT) is an international non-profit organization that provides rehabilitation services to survivors of torture and severe war atrocities. Since its founding in 1985, CVT has extended care to nearly 25,000 survivors at our healing sites in Minnesota, Africa and the Middle East. CVT would like to express its gratitude to the House Judiciary Subcommittee on Immigration and Border Security for the opportunity to submit testimony and encourages the Subcommittee to have a thoughtful discussion of steps Congress can take to improve the asylum process.

Survivors of Torture Seeking Asylum in the United States:

CVT believes in preserving the integrity of asylum adjudications and understands the importance of measures designed to deter and prevent fraud, as well as to protect national security and community safety. Preventing fraud and providing asylum applicants with access to a fair and efficient adjudication process are not mutually exclusive. The current backlogs and wait times in the immigration courts undermine fraud prevention and refugee protection—simultaneously making the system vulnerable to abuse while denying applicants meaningful access to the process.

The United States should be proud of the thousands of lives that are saved every year through its asylum system—for refugees facing political, religious and other forms of persecution, fleeing from their country is often a matter of basic survival, not a choice, and the U.S. asylum system can be a lifeline. At our clinic in Minnesota, CVT's clients share accounts of being subjected to rape, beatings, mock executions, blindfolding, electroshock, forced starvation or food deprivation, and other brutal forms of torture. As a government's use of – or acquiescence to – the practice of torture is often indicative of broader human rights violations and abuses of power, refugee survivors of torture are often fleeing situations in which war, military dictatorships, organized violence, massacres, disappearances or other gross violations of human rights have occurred.

As we learn of the painful experiences that brought them to the United States, CVT sees first-hand the ways in which refugee survivors of torture are able to rebuild their lives. We also see how refugees who came to the United States in search of protection frequently find themselves navigating a confusing labyrinth of complicated laws and legal procedures in an asylum adjudication process that takes months or years. CVT's clients regularly describe agony and dread associated with waiting extended periods of time before having their asylum cases heard in the immigration courts. During that time, they remain separated from family members. Their housing is often unstable or unsafe, making them vulnerable to exploitation. Throughout this period of waiting, they live in constant fear of being returned to the

country in which they were tortured. When a survivor of torture's life remains in this state of limbo, the trauma is ongoing and the instability may exacerbate symptoms of depression, anxiety or other conditions they may be suffering. Currently, the average length of the wait time in the immigration courts is 570 days.[1]

As the Committee examines this important question of asylum fraud, CVT offers a series of recommendations for steps Congress can take to improve the system overall, while helping those who have genuine asylum claims move more smoothly—and less traumatically– through the process.

Recommendations:

- ***Increase personnel in both U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice/Executive Office for Immigration Review (EOIR).*** Properly staffing the adjudication functions of the U.S. immigration system is critically important to reducing the backlogs and wait times. More personnel in both the USCIS Asylum Division and the EOIR immigration courts will allow much quicker adjudication of asylum claims.

- ***Provide legal counsel and legal information for individuals in immigration proceedings***. The high numbers of individuals appearing in proceedings without counsel contributes to the backlog in the immigration courts as judges are forced to guide *pro se* individuals through immigration court proceedings, often through an interpreter, sometimes issuing continuances to give individuals time to find counsel. The American Bar Association concluded that "enhancing access to quality representation promises greater institutional legitimacy, smoother proceedings for courts, reduced costs to government associated with *pro se* litigants, and more just outcomes for noncitizens."[2] While not a substitute for legal representation, EOIR's Legal Orientation Program (LOP) contracts with nonprofit organizations to educate immigrants in removal proceedings about basic immigration law and procedure. By helping individuals make informed decisions, LOP results in fewer court hearings and less detention time.[3] LOP should be expanded nationwide.

- ***Eliminate the asylum filing deadline***. The asylum filing deadline is an arbitrary procedural hurdle that contributes to the backlog in the immigration courts by funneling genuine asylum applicants from the USCIS Asylum Office into the immigration courts. The filing deadline adds an administrative step that mandates asylum officers and immigration judges determine whether an asylum seeker can prove by clear and convincing evidence that she entered the United States within one year of applying for asylum. This blunt instrument creates inefficiencies without providing any additional security or protections against fraud.

Please contact Annie Sovcik, Director of the Washington Office at the Center for Victims of Torture, at 202/822-0188 or asovcik@cvt.org with any questions.

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[1] *Immigration Court Backlog Tool,* TracImmigration, Syracuse University, http://trac.syr.edu/phptools/immigration/court_backlog/ (last accessed February 10, 2014).
[2] American Bar Association Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* (2010), at ES 39-40.
[3] Legal Orientation Program: Evaluation and Performance Output Measurement Report, Phase II, VERA INSTITUTE OF JUSTICE, at iv(May 2008) *available at* http://www.justice.gov/eoir/reports/LOPEvaluation-final.pdf

Statement from the Torture Abolition and Survivors Support Coalition (TASSC) International

February 11, 2014

Chairman Bob Goodlatte, Ranking Member John Conyers and Members of the House Judiciary Committee

TASSC International welcomes this opportunity to submit testimony to the U.S. House of Representatives Judiciary Committee on the political asylum process. TASSC was founded in 1998 by Sister Dianna Ortiz, an American nun who was teaching Guatemalan children in 1989 when she was brutally tortured and raped by Guatemalan security forces. TASSC is a unique organization founded, led and inspired by torture survivors, with the goal of improving the lives of survivors in the United States and ending the practice of torture worldwide.

It hosts a pro bono asylum program for asylum seekers and provides a variety of supportive services including housing and employment counseling and referrals to a variety of health institutions. The organization also has a survivor-informed advocacy program that enables survivors to heal psychologically while they educate the public and policymakers on the effects of torture, immigration detention and other policies on survivors.

TASSC understands the concerns of the subcommittee regarding some abuses in the asylum process. But we want to share stories of bona fide asylees and asylum seekers with the Committee so that the United States continues to protect asylum seekers and refugees who have been persecuted, tortured, and subject to unspeakable horrors by their own governments. We also would like to provide information about their experiences in U.S. immigration detention. Spending months in the jail-like facilities used by ICE (US

Immigration and Customs Enforcement) can retraumatize survivors, bringing back memories of torture and powerlessness. Details of retraumatization are documented in *Tortured & Detained: Survivor Stories of U.S. Immigration Detention,* a report issued in November 2013 by TASSC, The Center for Victims of Torture, and The Unitarian Universalist Service Committee.

The Washington DC metropolitan area has a sizeable African immigrant community. Africans made up 11 percent of the total immigrant population in 2005 according to the U.S. Census Bureau, so it is not surprising that the majority of TASSC survivors are African. What follows are stories of three TASSC survivors from three African countries: Ethiopia, Cameroon and Eritrea. Names have been changed to protect their identities.

Marie

Marie had never heard of political asylum when she crossed the U.S.-Mexican border five years after escaping from prison in a repressive African country. She had never been involved in politics. Marie was abducted, raped and tortured by government agents only because of her father's activities with an opposition political party. She became pregnant in prison and was forced to give birth there. She and her baby finally escaped and Marie managed to arrive in the United States. She was terrified of being deported back home, although she was a legitimate candidate for political asylum. But she spent months in detention, in a large room without private toilets and showers, before finally being released.

Mesfin

Mesfin was a university graduate and church deacon. He was chosen to observe elections in his country because he was a respected, non-political person. A week before the election, ruling party officials warned him that he had to help ensure a victory for their party or there would be serious consequences. Mesfin is a deeply spiritual Christian who places an enormous value on integrity and refused to falsify election results. Shortly after the election, ruling party representatives "visited" his home and dragged him off to prison, keeping him there 20 days. After being released, he was harassed for three years -- he could not renew his government identification and was forced to close his business. Finally he decided to leave his country. He entered the United States, requested asylum and was detained for almost six months in a San Antonio detention center. Mesfin was granted political asylum in 2011.

Haile

Haile is a Catholic charismatic from Eritrea, who was persecuted for his religious beliefs. Eritrea has four "official" religions—Sunni Islam and the Eritrean Orthodox, Roman Catholic and Evangelical Lutheran Churches. Since 2002, unrecognized churches such as Catholic charismatics and Pentecostals have been effectively banned. The U.S. Commission on International Religious Freedom's 2013 Report placed Eritrea in its Tier 1 category, made up of countries which engage in "particularly severe violations of religious freedom." When Haile arrived in the United States, he requested asylum, but he was detained by agents of the U.S. Customs and Border Protection. They handcuffed him, put chains around

his waist and legs and forced him to sleep in an ice-cold holding cell before detaining him in the South Texas Detention Center for six months.

We want to thank the Judiciary Committee for considering the testimony of TASSC torture survivors. Our country has a long history of providing refuge to people who have been persecuted because of their race, religion, nationality, political opinion or membership in a particular social group. We hope that the United States will continue this tradition, especially for torture survivors, refugees, and other vulnerable immigrants, as you review the asylum process.

Contact Information: Andrea Barron at Andrea@tassc.org (www.tassc.org)

NATIONAL
IMMIGRANT
JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

Statement of
Mary Meg McCarthy, Executive Director
Heartland Alliance's National Immigrant Justice Center

House Committee on the Judiciary
Subcommittee on Immigration and Border Security
Hearing on "Asylum Fraud: Abusing America's Compassion?"

February 11, 2014

Chairman Gowdy, Ranking Member Lofgren, and members of the Subcommittee on Immigration and Border Security of the House Committee on the Judiciary:

As a national leader in asylum law and policy, Heartland Alliance's National Immigrant Justice Center (NIJC) appreciates the opportunity to submit testimony for today's hearing. We share the subcommittee's interest in ensuring that our asylum system operates with integrity to provide life-saving protection to asylum seekers fleeing persecution.

NIJC is a non-governmental organization dedicated to safeguarding the rights of noncitizens. With offices in Chicago, Indiana, and Washington, D.C., NIJC advocates for immigrants, refugees, asylum seekers, and victims of human trafficking through direct legal representation, policy reform, impact litigation, and public education. NIJC and its network of 1,500 *pro bono* attorneys provide legal counsel to approximately 10,000 noncitizens annually. At any given time, NIJC has more than 200 open asylum cases, most of which are placed with *pro bono* attorneys. NIJC carefully screens each potential client's legal eligibility and provides each *pro bono* attorney with intensive legal training and ongoing technical support. NIJC represents clients seeking asylum affirmatively before U.S. Citizenship and Immigration Services (USCIS) as well as clients seeking asylum in removal proceedings before an immigration judge, some of whom are detained by U.S. Immigration and Customs Enforcement (ICE). NIJC also provides appellate representation for asylum seekers before the Board of Immigration Appeals and the federal courts of appeals, including the Supreme Court.

NIJC has played a major role in advocating for reform of the immigration system. As the co-convenor of the ICE-Nongovernmental Organization (NGO) Enforcement and Detention Working Group, NIJC facilitates advocacy and open dialogue between ICE and human rights organizations, legal aid providers, and immigrant rights groups. With a national membership of more than 100 NGOs, the Working Group advocates for the full protection of internationally recognized human rights, constitutional and statutory due process rights, and humane treatment of noncitizens. NIJC also participates in the Asylum Working Group and was a founding member of the Asylum Litigation Working Group. These entities exist to monitor the creation and implementation of laws

and policies that impact asylum seekers. NIJC's years of experience advocating on behalf of asylum seekers through legal representation and advocacy, while collaborating with colleagues throughout the country and internationally, gives us a unique perspective on the asylum system and its relationship to U.S. obligations under domestic and international law.

The United States has a proud legacy of protecting people who have been persecuted. Our system is based on changes made following the Second World War when our restrictive policies prevented thousands of individuals escaping persecution, including genocide in Europe, from obtaining protection. Consequently, Congress passed the Displaced Persons Act of 1948, which allowed 400,000 European refugees to resettle in the United States. The law marked a turning point in U.S. refugee policy and set a precedent for granting protection to future populations.

This testimony provides an assessment of the current asylum system and its on-the-ground impact on individuals seeking protection in the United States. It also provides recommendations to ensure that individuals seeking protection continue to have access to asylum as guaranteed under domestic and international law. Because NIJC already addressed the first step in the asylum process, the credible fear interview, in written testimony for the December 2013 U.S. House Judiciary Committee Hearing dedicated to that part of the system, this testimony focuses on the system asylum seekers face once they have passed their preliminary interviews.[1]

1. The Asylum System is Robust

The United States is committed to ensuring that individuals on our soil are not returned to a country where their life or freedom would be threatened, while also maintaining our national security. The asylum system is designed to scrutinize asylum seekers in order to ensure the decision to offer protection is an informed one. Under existing law, asylum seekers must demonstrate they possess a well-founded fear of persecution in their country of origin based on one of the following protected grounds: race, religion, nationality, membership in a particular social group, or political opinion.[2] Safeguards exist to prevent individuals who could pose a risk to public safety or national security from being granted asylum. The Immigration and Nationality Act (INA) prohibits granting asylum to individuals who participated in the persecution of other people; individuals who have been convicted of serious crimes and are identified as dangers to the community; or to individuals classified as dangers to national security.[3] Asylum applicants are subject to extensive background

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[1] National Immigrant Justice Center testimony to the U.S. House Judiciary Committee Hearing on the Credible Fear Interview and Asylum Parole Processes, December 2013, http://immigrantjustice.org/nijc-testimony-submitted-us-house-judiciary-committee-hearing-credible-fear-interview-and-asylum-par#_ftn9. Additionally, NIJC was one of 118 NGOs that sent a letter to House Judiciary Committee leaders discussing the credible fear process and discouraging new restrictions to the asylum system, http://immigrantjustice.org/sites/immigrantjustice.org/files/2013_12_13%20NGO%20Sign%20on%20Letter%20Asylum%20and%20Border.pdf.

[2] INA §208; 8 U.S.C. §1158.

[3] INA §208(b)(2); 8 U.S.C. §1158.

checks. They are interviewed by asylum officers in the USCIS who are trained to detect fraud[4] and/or by immigration judges with expertise in assessing credibility and ferreting out claims that are not bona fide.

The asylum application process is long and arduous. Asylum seekers must prepare comprehensive applications, which typically include detailed personal statements, relevant country conditions information, expert affidavits, media reports from their home countries, medical and psychological forensic reports, and extensive identity documentation. In addition, due to changes made through the Real ID Act of 2005[5], individuals must provide corroborating evidence to support otherwise credible testimony and adjudicators have enormous discretion to make adverse credibility determinations based on a plethora of different factors. Because immigrants are not entitled to appointed counsel, many asylum seekers must navigate this complicated process alone, and some must complete this process while in detention with minimal access to resources. NIJC has represented thousands of asylum seekers, all of whom required intensive assistance to compile complete and comprehensive asylum applications:

> Celine[6] was only four years old when her mother and three siblings were tortured and killed by Hutu militias fleeing to the Democratic Republic of Congo in the wake of the Rwandan genocide. Six years later, her father and two more siblings were killed by Congolese government forces because her father sought justice and pursued the prosecution of the men who had killed his family members. Left alone and unprotected, Celine and her younger sister were abducted by militia fighters who carried them into the Congolese forests where they brutally tortured and raped them on a daily basis for nearly three months. Celine eventually escaped and fled to the United States. Her sister remains in hiding in Rwanda.
>
> Celine contacted NIJC, and NIJC prepared her asylum application. Celine met frequently with her legal team and was slowly able to reveal her painful story. The legal team worked with Celine to draft her affidavit, arranged for medical and psychological forensic reports, gathered country conditions evidence, and wrote a legal brief demonstrating how the facts and evidence established her eligibility for asylum. Though Celine's case was difficult because she first contacted NIJC more than a year after she arrived in the United States and therefore filed an untimely application for asylum, she ultimately prevailed before the Chicago Asylum Office and was granted protection.

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[4] Human Rights First, "ANTI-FRAUD AND SECURITY SAFEGUARDS IN THE ASYLUM SYSTEM," available at: http://www.humanrightsfirst.org/wp-content/uploads/pdf/ANTI-FRAUD_AND_SECURITY_SAFEGUARDS_IN_THE_ASYLUM_SYSTEM.pdf.

[5] REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302 (May 11, 2005).

[6] All case stories in this testimony use pseudonyms to protect clients' identities.

In contrast to Celine's successful asylum claim where a massive effort by a skilled legal team resulted in protection, NIJC has seen cases where obstacles embedded in U.S. asylum law prevented legitimate refugees from receiving protection:

> Danielle from Togo was abducted and detained by government forces after she participated in a rally for women's rights. She was held in a filthy prison cell, where she was raped and vaginally cut. She managed to flee to the United States and applied for asylum. Due to her trauma, Danielle failed to disclose in her asylum proceedings the extent of the harm she experienced in Togo. Because she avoided discussing her rape and genital mutilation by answering the immigration judge's question in vague terms, the judge found her testimony not credible and denied her asylum claim. Danielle then requested assistance from NIJC. Though Danielle's NIJC legal team later offered a detailed personal affidavit from Danielle, medical documents corroborating her persecution, and a forensic psychological exam explaining that Post Traumatic Stress Disorder had rendered Danielle unable to disclose her harm, Danielle was unable to overcome the negative credibility assessment and was denied protection on appeal.

As this case illustrates, our asylum system's rigorous anti-fraud protections often are applied overzealously and result in erroneous denials of protection. Additional anti-fraud measures would be superfluous and could cause bona fide refugees to be deported to countries where they face torture and death.

II. Exemptions to the Terrorism Related Inadmissibility Grounds Do Not Place America at Risk

In two separate notices recently published in the Federal Register, the Department of Homeland Security (DHS) and Department of State expanded exemptions available to individuals who meet all other requirements for immigration relief and who pose no threat to the security of the United States but are blocked based on terrorism bars that are so broadly defined, individuals may inadvertently fall under their shadow. Specifically, the rules exempt individuals from the bar who provided "limited material support" to an undesignated terrorist organization when the support was insignificant, or involved certain routine commercial or social transactions or humanitarian assistance, or was provided under substantial pressure. Congress gave the executive branch authority to establish practical exemptions such as these in order to ensure that our laws are applied in a way that does not punish our allies or label as "terrorist" innocent people engaged in innocuous activities.[7]

> One of NIJC's clients currently faces exclusion from asylum protection for having raised money through bake sales for the women's branch of a prominent political opposition party. Although the dictatorship in her country claimed that the opposition party had used unlawful violence, our

[7] INA §212(d)(3)(B)(i); 8 U.S.C. §1182(d)(3)(B)(i)

client did not have knowledge of these activities and had never been involved in any violent activity herself. DHS did not claim that she poses a threat to the security of the United States, but has opposed her asylum grant claiming she provided material support to an undesignated terrorist organization.

Preventing terrorists from accessing asylum protection is inarguably a top priority for our asylum adjudicators. Calibrating our terrorism bars to effectively target terrorists is a crucial step towards keeping American safe while offering protection to victims of persecution.

III. Destabilizing Violence in Central America is on the Rise

Over the past year, members of Congress have expressed concern over the number of asylum seekers fleeing from Central American countries, suggesting that those applicants have fraudulent claims of persecution. The sad reality, however, is that there has been a well-documented increase in destabilizing violence and turmoil in the region in recent years.[8] The victims of this violence are often targeted for reasons – such as gender, family group membership, and status as witnesses – that give rise to viable asylum claims. According to a November 2013 report by the U.S. Conference of Catholic Bishops, "violence at the state and local levels and a corresponding breakdown of the rule of law have threatened citizen security and created a culture of fear and hopelessness."[9] For the past two years, San Pedro Sula in northwest Honduras has had the highest murder rate in the world, with a rate of 169 homicides for every 100,000 inhabitants, or 36 times as many deaths as the U.S. national average.[10] Given the country's relatively small population—roughly the size of Virginia—this rate of violent crime and the lack of an effective government response has forced many to flee for their lives.

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[8] *See, e.g.*, "Guatemala 2013 Crime and Safety Report", U.S. State Department, April 2013. http://www.iccnow.org/documents/Access_to_Justice_in_Mexico_-_English.pdf; "Transnational Crime In Mexico and Central America; Its Evolution and Role in Migration", Migration Policy Institute, November 2012. Available at: http://www.migrationpolicy.org/pubs/RMSG-TransnationalCrime.pdf; "Forced from Home: The Lost Boys and Girls of Central America", Women's Refugee Commission, October 2012. Available at: http://womensrefugeecommission.org/resources/migrant-rights-and-justice/844-forced-from-home-the-lost-boys-and-girls-of-central-america/file; "Invisible Victims: Migrant on the Move in Mexico", Amnesty International, 2010. Available at: http://www.amnesty.org/en/library/asset/AMR41/014/2010/en/8459f0ac-03ce-4302-8bd2-3305bdae9cde/amr410142010eng.pdf; "Persistent Insecurity: Abuses Against Central Americans in Mexico", Jesuit Refugee Services, November 2013. Available at: https://www.jrsusa.org/Assets/Publications/File/Persistent_Insecurity.pdf; "A Profile of the Modern Salvadoran Migrant", US Committee for Refugees and Immigrants, December 2013. Available at: http://www.uscrirefugees.org/2010Website/3_Our%20Work/Child_Migrants/FINAL_ENGLISH_VERSION.pdf

[9] U.S. Conference of Catholic Bishops. *Mission to Central America: The Flight of Unaccompanied Children to the United States.* Nov. 2013. Available at: http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf.

[10] FBI, Crime in the United States by Metropolitan Statistical Area, 2012. http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/6tabledatadecpdf; Romo, Rafael and Nick Thompson. "Inside San Pedro Sula, the 'Murder Capital' of the World." CNN. http://www.cnn.com/2013/03/27/world/americas/honduras-murder-capital/.

Honduras is not alone. Violence in Mexico, Guatemala, and El Salvador is equally pervasive. The expansion and increased influence of the Mexican-based drug cartel los Zetas, has increased gang violence in the region; impunity is nearly universal.[11] More than 47,000 people were killed in drug violence in Mexico from 2006 to 2011.[12] Likewise, the State Department reported that Guatemala has one of the highest rates of violent crime in Central America, with nearly 100 murders each week.[13] In El Salvador, a shaky 2012 truce between rival gangs, Mara Salvatrucha and Barrio 18, is unraveling with murder rates in November 2013 climbing to 11 killings each day.[14] (El Salvador has half the population of Guatemala and is slightly smaller than the population of Tennessee.)

The violence in Central America has triggered an outflow of refugees who are running for their lives. Most often they have abandoned their homes to seek safety for reasons that may form the basis of an asylum claim. NIJC regularly provides consultations to men, women, and children from Central America who have resisted gang recruitment, refused or cannot afford to pay protection money, or sought law enforcement assistance and justice for gang violence and were then targeted with threats, violence, and death for their actions. While some of these individuals may not be able to prove that the harm they fled makes them eligible for asylum, this does not mean that their applications were fraudulent. And to the extent the law does not recognize those who flee gang recruitment or take a stand against a gang and its activities as bona fide refugees, our system should adjust to extend the same refugee protections to this population that we provide to others who place their lives as risk by resisting violent and coercive dictatorships or guerilla groups.

> In his home country of Honduras, Jorge provided testimony against a gang leader who was involved in criminal enterprises. As a result of Jorge's testimony, the gang leader was convicted and sent to jail. After the trial, gang associates began threatening to kill Jorge and his family. Fearing for his life, Jorge fled to the United States, where he was detained by ICE. After he left Honduras, his brother, who had just graduated from law school, was gunned down by the gang. While Jorge awaited deportation, gang associates told his family in Honduras that they knew Jorge was about to be deported and would be waiting to kill him when he arrived. Though Jorge possessed a legitimate asylum claim, he was removed from the United States before he was able pursue his case. He is now living in hiding in Honduras under the threat of death by the gang he sought to help prosecute.

IV. The Immigration Court System Needs an Infusion of Resources to Ensure its Integrity

[11] Shoichet, C. "Mexican Forces Struggle to Rein in Armed Vigilantes Battling Drug Cartel." CNN. Jan. 17, 2014. http://www.cnn.com/2014/01/17/world/americas/mexico-michoacan-vigilante-groups/
[12] "47,000 People Killed in Drug Violence in Mexico," Jan. 11, 2012, Washington Times, available at: http://www.washingtontimes.com/news/2012/jan/11/47000-people-killed-drug-violence-mexico/.
[13] https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13878.
[14] "Shaky Truce: Is El Salvador's Gang War Really on Hold?" by Will Grant, Jan. 22, 2014, BBC News, available at: http://www.bbc.co.uk/news/world-latin-america-25711892.

Our immigration court system severely lacks the resources necessary for it to run efficiently and judges are woefully overworked and understaffed. Judges who participated in a survey conducted by a group of psychiatrists were found to have higher levels of stress, trauma, and turnover than prison guards or physicians in busy hospitals. During testimony before Congress, Immigration Judge Lawrence Burman, who presides over three times as many cases a year as a federal judge, has described the over-saturated system as "doing death-penalty cases in a traffic-court setting."[15]

Due to a hiring freeze, positions were reduced from 272 to 249 immigration judges. Proposals to increase hiring by 225 judges have stalled in the U.S. House of Representatives. Of the judges who remain, almost half will be eligible for retirement in 2014, adding even more stress to a system that already has far more cases than it can effectively manage.

This shortage of resources – combined with an increased caseload driven in large part by vigorous immigration enforcement efforts – has created an unprecedented backlog in immigration courts. As a result, asylum seekers often wait anywhere from months to years for decisions on their cases. The average wait time to see an immigration judge is now 553 days, but unfortunately, in cities with large immigrant populations like Chicago, the wait time is often closer to three years.[16] While these cases await resolution, evidence grows stale, witnesses are lost, and country conditions shift. As a result, cases that were very strong at the outset appear less substantial by the time they go to trial, even when a strong threat of persecution remains.

> NIJC began representing Stephen, a political dissident from West Africa, in 2007. He left behind his wife and infant son when he fled to the United States after his life was threatened by his government. He was originally scheduled for an individual court hearing on his asylum in 2010. In 2010, the immigration court continued Stephen's hearing to 2012 because the judge presiding over his case retired and his case was assigned to a different judge. In response to a motion to advance proceedings filed by Stephen's attorneys, his hearing was moved to December 2011 and transferred to a new judge, but then continued by the court back into 2012. A month before that hearing was to occur, the court again continued Stephen's case, this time until August 2013. NIJC managed to exchange dates with another asylum case to secure an April 2012 hearing date for Stephen, but the judge cancelled court on that date and Stephen was rescheduled for June 2012. On that date, the judge heard testimony, but was unable to complete the case and rescheduled it for September 2014. Stephen's attorneys filed another motion to advance and had a hearing in August 2013. On that date, he was granted asylum. Stephen's case was handled by five different *pro bono* attorneys and was before three different judges. It took six years for him to be granted asylum, during which time he was separated from his wife and child.

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[15] Saslow, E. "In a Crowded Immigration Court, Seven Minutes to Decide a Family's Future." *Washington Post.* Feb. 2, 2014. http://www.washingtonpost.com/national/in-a-crowded-immigration-court-seven-minutes-to-decide-a-familys-future/2014/02/02/518c3e3e-8798-11e3-a5bd-844629433ba3_story.html.

[16] Transactional Records Access Clearinghouse, Syracuse University, "Backlog of Pending Cases in Immigration Courts as of December 2013," http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php.

Stephen was fortunate his counsel was able to advance his proceedings. An unrepresented asylum seeker would still be waiting for case resolution, enduring family separation, and hoping the years between when he gave his testimony and when the judge anticipated issuing a decision did not prejudice his case.

Despite the obstacles they face and dearth of resources, immigration judges strive to provide expert credibility assessments and discern the veracity of the asylum claims before them. An infusion of resources directed toward the courts would improve this system and enable the courts to deal with asylum cases in a timely and effective manner.

V. Conclusion and Recommendations

Although the current asylum system is designed to ensure that the U.S. government does not deport individuals to countries where they would be persecuted, many individuals with meritorious claims may still be denied protection. We offer the following recommendations to improve the asylum system:

- **Provide additional funding to the Executive Office for Immigration Review (EOIR) for the immigration courts.** Adequate funding will promote timely and efficient adjudication of asylum applications, thereby providing essential protections to those fleeing harm and allowing for the kind of due process that can identify fraudulent claims while also ensuring a fair hearing.

- **Provide funding for universal Legal Orientation Programs (LOPs) and improve access to counsel**. LOPs provide an overview of the immigration removal process to detained immigrants – the vast majority of whom do not have attorneys – so that they better understand how proceedings work and what immigration relief from removal they may or may not be eligible for. Studies have shown that LOPs reduce costs and increase efficiencies because detainees spend less time in detention and require fewer days in court when they have a better understanding of the process.[17] In fact, current programming generates a net savings of $18 million each year. At present, LOPs are only provided at approximately 25 locations around the country, primarily at the southwest border and not at all in the Midwest. Legal orientations for these regions are left to the scarce resources of non-profit organizations who periodically visit detention facilities to provide programs on their own. Universal funding for LOPs would provide parity for immigrants across the country, promote due process, and generate enormous cost and time efficiencies.

[17] Report to Senator Barbara Mikulski, Chairwoman, Senate Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, "Cost Savings Analysis – The EOIR Legal Orientation Program (Updated April 2, 2012)," July 2, 2012.

- **Provide additional oversight over DHS encounters with Central American migrants at the border** to ensure that credible claims of persecution are not being overlooked or ignored. DHS Customs and Border Protection and ICE officers who encounter immigrants from Central America often assume that these individuals are economic migrants who do not have protection needs. NIJC is routinely made aware of cases in which Central Americans apprehended at or between U.S. Ports of Entry are not asked whether they fear persecution, or such claims of fear are ignored. These practices are in violation of U.S. and international laws that prohibit the U.S. government from returning individuals who face persecution in their countries of origin. DHS must ensure that all immigrants apprehended at the border are asked if they fear return, and those immigrants who express fears must receive a credible fear interviews as required by U.S. law.

These improvements will provide measures of integrity to the asylum process without compromising the human rights and due process needs of those fleeing persecution. NIJC urges members of the subcommittee and administration who are in pursuit of perceived fraud to avoid changes to the immigration and asylum systems that unnecessarily restrict access to protection. These equally meritorious goals – integrity of the system and protection for the persecuted – need not be placed at odds with one another and can be resolved in a mutually beneficial way.

Statement for the Record

House Judiciary Committee

Asylum Fraud: Abusing America's Compassion?

February 11, 2014

The National Immigration Forum works to uphold the United States of America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

Introduction

The National Immigration Forum thanks the Committee for holding this hearing to examine the asylum process a few weeks after the GOP Standards release and urges the Committee to take up broad immigration reform including an earned path to citizenship. Over the past year, the House of Representatives has addressed immigration reform in a step by step, passing five smaller bills relevant to immigration out of committee. However, we believe that the complex, interrelated nature of our immigration system demands consideration all of the elements of that system or we will face unpleasant, avoidable unintended consequences.

We believe the current conversation around immigration reform is different. In the past two years, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America. These relationships formed through outreach in the evangelical community, the development of state compacts, and regional summits across the country.

In early December 2012, over 250 faith, law enforcement and business leaders from across the country came to Washington, D.C. for a National Strategy Session and Advocacy Day. They told policymakers and the press about the new consensus on immigration in America. In February 2013, to support these efforts, the National Immigration Forum launched the Bibles, Badges and Business for Immigration Reform Network to achieve the goal of broad immigration reform. In October of this year, to

help achieve that goal, this network co-hosted Americans For Reform at a two-day event where participants organized 185 Hill meetings (145 with Republicans).

Background

The United States has a long history of protecting persecuted refugees and displaced persons fleeing oppression and war. In the wake of World War II, the United States accepted refugees but adhered to strict quotas that resulted in turning away thousands of victims fleeing from persecution and anti-Semitism. Soon after the war, it became evident that there needed to be an organized and specific refugee rescue policy, leading Congress to enact The Displaced Persons Act of 1948. The Displaced Persons Act, a turning point in U.S. immigration policy, allowed an additional 400,000 European refugees to resettle in the United States and established a precedent for later refugee crises.

Thereafter, the United States played a leading role in the United Nations in drafting the 1951 Convention Relating to the Status of Refugees (CRSR). The CRSR defined who qualified as a refugee, set out the rights of individuals granted asylum, and established the responsibilities of nations that grant asylum. Of the signatory countries, the United States accepts more than twice as many refugees as the other nine other countries combined.

The overwhelming majority of asylum claims are from immigrants fleeing despotic regimes, religious persecution and other harms that threaten their lives or well-being. In 2012, asylum seekers came from countries such as China, Egypt, Ethiopia, Venezuela, Nepal, Russia, Iran, Haiti, Guatemala and Eritrea. Persecuted groups in these countries have faced persecution, intolerance and oppression, eliciting sympathy from around the world. For many of these individuals, if not all, a ticket back home may be a death sentence.

The United States historically has protected those fleeing from past or future persecution on the basis of race, religion, nationality, political opinion, and membership in a particular group. The Forum believes that the Committee should continue this exemplary tradition and further work to protect those fleeing prosecution by reforming the immigration system.

Who can apply for asylum?

Only a small section of immigrants can apply for asylum. Individuals fleeing persecution can apply for asylum in the United States either affirmatively or defensively[1]. Persons applying affirmatively are those seeking asylum in the United States without having been placed in removal proceedings by the Department of Homeland Security (DHS). By contrast, individuals who are arrested and placed in removal proceedings may apply for asylum defensively while in removal proceedings before an Executive Office of Immigration Review (EOIR) immigration judge.

Fleeing immigrants may apply affirmatively for asylum in the U.S., within one year of their arrival regardless of their current immigration status, and must prove they are refugees as defined in the INA. Fleeing immigrants may also apply for asylum at a port of entry, by either expressing an intention to apply for asylum or a fear of returning to their country of removal[2]. Those immigrants are detained and referred to DHS for a "credible fear" interview with an asylum officer.

It is important to note that the majority of defensive and "credible fear" applicants are detained by DHS until a determination is made on their case. The purpose behind this policy is to deter and prevent undeserving applicants from entering the country with a frivolous claim.

The asylum system has many anti-fraud mechanisms

The asylum system is intended to ensure that only the most deserving individuals are granted protective status. The process is purposefully difficult and complicated with multiple safeguards throughout to deter and prevent frivolous and fraudulent claims. However, the focus, almost obsession with fraud and frivolous claims, is excluding *bona fide* applicants from the process.

Today, all refugees and asylum seekers must undergo rigorous security checks designed to counter fraud. Before even getting in front of an asylum officer, asylum seekers identity and application must undergo criminal and national security checks in 13 separate federal computer databases.[3] In adjudicating asylum cases, an asylum officer

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[1] This is different from a refugee status which takes place outside the U.S. borders and is handled by the U.S. Refugee Program (USRP). Refugees enter the country with refugee status; they do not go through asylum adjudication in the U.S.

[2] Immigrants arriving at a US port of entry without proper documentation may also claim asylum in a similar fashion.

[3] USCIS Asylum Officer Basic Training Manual. 2013

considers not only the credibility of the testimony provided at the asylum or "credible fear" interview but also reviews the information generated by the 13 databases, including the Forensic Documents Laboratory[4].

Additionally, the U.S. asylum system discourages fraud by requiring that asylum applications and testimony must be provided under penalty of perjury – and asylum claims must be found credible in order to be granted. Applicants who provide false information can be prosecuted and permanently barred from receiving any future immigration benefits. The penalties for frivolous or fraudulent asylum applications also extend to attorneys and interpreters.

The overall number of asylum claims in the US had been on a steady decline since 1996; in the last three years those numbers have increases slightly. In 2010 there were a total of 42,860 applications, the following year that number increased to 48,226, it then dropped slightly in 2012 to 44,170. [5] Projections for 2013 indicate applications will increase again to around 48,000 applications.[6] In fact, according to the United Nations High Commissioner for Refugees (UNHCR), 920,000 individuals applied for asylum and refugee status worldwide in 2012, the second-highest level of applications in the past 10 years[7]. UNHCR projects that worldwide asylum applications will increase 27-30 percent in 2013 over 2012 levels, due to increased worldwide political and economic unrest.[8] United States has and remains the largest single recipient of asylum claims among industrialized countries.[9] Despite the increase in asylum applications over the last few years the data indicates that approval ratings have not increased or decreased in a statistically significant way

We all want a better asylum process

If this Congress is seeking to avoid waste, fraud and frivolous applications, it should look to reforming the immigration system and elements of the asylum system. Congress can take several actions right now that would significantly improve asylum process, including: increase U.S. Citizenship and Immigration Services (USCIS) and EOIR funding for more officers (which would alleviate persistent backlogs), simplify the work

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[4] The laboratory verifies the authenticity of the documents
[5] U.S Department of Justice Executive Office for Immigration Review FY-12 Statistical Year Book.
[6] UNHCR 'Mid-year trends 2013,' http://www.unhcr.org/52af08d26.html
[7] See note 6
[8] UNHCR 'Asylum Levels and Trends in Industrialized Countries 2012' http://www.unhcr.org/5149b81e6.html
[9] See note 5

authorization process for asylees, and remove the arbitrary bar against asylum claims filed more than one year after the asylum seeker has entered the United States.

a. Increase funding

A shortage of asylum officers and lack of funding have created significant application backlogs. While USCIS asylum office has made considerable efforts to improve the backlog, as of December 2013, it has 38,892 pending cases and is operating 120 asylum officers short of what it needs.[10] History[11] shows that, adding more asylum officers will lower backlogs but also improve the adjudication process of asylum hearings.

In light of increasing unrest in the world and a projected increase in asylum and refugees applicants, providing additional funding will help shorten backlogs and keep needed continuity in the department. Similarly, providing more resources to EOIR for additional justices and personnel will lower the backlog[12], but also improve judicial hearings. USCIS and immigration courts perform a critical check on the enforcement authority of the Department of Homeland Security and must be funded at a level that allows them to perform their role.

b. Eliminate the arbitrary bar to asylum imposed by the one-year deadline

The one-year filing deadline creates an arbitrary barrier to *bona fide* asylum claims. This arbitrary procedural hurdle has led not only to grave injustices in particular cases, but also to gross inefficiencies in the overall asylum process. Cases that would have been granted by Asylum Officers at an initial interview but-for filing deadline issues are needlessly referred to Immigration Judges for further proceedings, adding to the staggering backlogs in Immigration Courts.

The bar to asylum for applicants who do not file within one year of arrival in the United States[13] was enacted in 1996. It is clear from legislative history that the bar was never intended to deny safe haven to legitimate asylum seekers.[14] Accordingly, broad

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[10] USCIS Asylum Division Asylum Report; 2014; *Ibid.*

[11] IIRAIRA, individual asylum officers heard an average of 461 cases per year that number fell to an average of 159 per asylum officer by 2013.

[12] Current backlog at a staggering 152,315 pending cases

[13] INA § 208(a)(2)(B). Another element of IIRAIRA.

[14] *See, e.g.*, statement of Senator Orrin Hatch that "...[i]f the time limit is not implemented fairly or cannot be implemented fairly I will be prepared to revisit this issue in a later Congress." See 142 Cong. Rec. S11840 (daily ed. Sept. 30, 1996), *cited in* Leena Khandwala, Karen Musalo, Stephen Knight, and Maria Anna K. Hreshchyshyn, *The*

exceptions were established (for "changed" or "extraordinary" circumstances) to excuse a justifiably late-filed asylum application. However, in practice, many Immigration Judges narrowly construe the exceptions to the filing deadline. As a result, *bona fide* applicants are routinely denied asylum or granted a lesser form of relief.

There are many reasons why a refugee might file a request for asylum protection more than a year after arriving in the U.S. Many asylum seekers do not speak English, have physical, mental or emotional health problems, frequently as a result of the trauma they suffered in their home countries, and struggle upon arrival to meet their basic needs. Moreover, potential applicants may not understand asylum procedures or even know they are eligible for asylum. They also may face delays in obtaining counsel and in gathering documentation necessary to corroborate their claim.

If a refugee for asylum has not filed within one year of arrival in the United States, the asylum seeker is still eligible for an exception based upon either "extraordinary" or "changed" circumstances. However, the exceptions available to the one-year filing deadline have proved inadequate to ensure access to asylum for *bona fide* refugees. Yet they do offer the potential to allow at least some refugees who would otherwise be barred to request and receive asylum. Unfortunately, many adjudicators interpret these exceptions highly restrictively, leading to further disparities in decision-making based solely on the precise time the asylum request was filed. The most effective way to address this issue is to remove the filing deadline and to allow legitimate asylum claims to be heard. In the interim, issuing clear guidance to asylum adjudicators on the appropriate interpretation of the exceptions will provide the opportunity for at least some of those in need of protection to have their claims adjudicated on the merits.

CONCLUSION:

Asylum issues are less about the number of foreign nationals crowding our borders and more about the qualities of the services provided. It is not asylum that is backlogging our immigration system but rather a disjointed national immigration system.

While we recognize that the asylum system is not perfect and there have been individual cases where undeserving applicants have been able to improperly remain in the United States longer than they deserve, such cases represent only a small fraction of those seeking asylum. If Congress wants to improve the asylum system, eliminating waste, fraud and delay, it can make smart reforms to improve the system, building off existing, robust protections against fraud. It can provide more resources for new asylum officers,

which would help ease case caseloads and backlogs while freeing up asylum officers to spend more time investigating claims and eliminating fraud.

Moreover, Congress can scrap the arbitrary and unworkable bar against asylum claims filed more than one year after the asylum seeker has entered the U.S. This requirement create delay and hardship in the system, harming many more with legitimate asylum claims than those making fraudulent claims.

The Forum urges the Committee to work towards advancing reform legislation in the coming months. Our immigration problem is a national problem deserving of a national, comprehensive approach. We look forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law. The time is now for immigration reform.

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Testimony submitted to U.S. House Judiciary Committee, Subcommittee on Immigration and Border Security

Hearing: "Asylum Fraud: Abusing America's Compassion?"
Tuesday, February 11, 2014

Immigration Equality is a non-profit organization which offers free legal services to LGBT asylum seekers. Each year, Immigration Equality and our pro bono partners carry a docket of more than 300 open asylum cases for LGBT applicants. We train asylum officers and immigration judges, mentor immigration attorneys, and write extensively on LGBT immigration issues. For these reasons, we are nationally recognized as experts in this area of the law.

Asylum is absolutely vital to the LGBT community, where more than 75 countries continue to criminalize homosexuality. We represent individuals from Russia, Uganda, Jamaica and many other nations. In just the last year, our lesbian and transgender clients have been raped "to cure" their sexual orientation and gender identity. Our gay clients have been set on fire, slashed with machetes, and sentenced to death. The protection of asylum literally saves their lives.

Two of our clients from Ghana, a gay man and a lesbian, demonstrate why asylum is absolutely necessary.

> "Edward" fled Ghana after his extended family came to his home in the middle of the night to kill him for being gay. His uncles and cousins considered him to be an abomination, and sought to expunge the shame the family felt at having a gay relative. In desperation, Edward hid himself in a storage container on a freight ship, surviving for almost a week on one bottle of water and a small package of cookies. Shortly before arriving in the U.S., he announced himself to the ship's captain who turned Edward over to the Coast Guard.
>
> By the time he reached immigration authorities, Edward was exhausted, terrified, and very ill. He spoke little English, and signed a stipulated order of removal at the same time that he expressed a fear of persecution based on being gay. However, his removal officer informed him that he had already agreed to be deported, and so U.S. officials then removed Edward to Ghana. Once there, he was immediately arrested by homophobic police officers. At a traffic jam, Edward opened the door of the patrol car he was in, and ran for his life. Remarkably, he found another ship, and hid himself again in a storage container. This time, Edward was given the opportunity to explain his case to an immigration judge. The judge found Edward's story to be credible and granted him asylum. He now lives openly and safely as a gay man in New Jersey, where he is active in the Highland Park Church and where he volunteers as a soccer coach.

Edward's journey conveys the absolutely vital role of asylum for LGBT people. It also demonstrates the detriment of detention to refugees. Had Edward been paroled into the U.S. instead of immediately detained, he would never have signed an agreement to be deported back to a country where he was arrested for being gay. Below, another client's story further demonstrates how damaging prolonged detention can be on an asylum seeker.

> In Ghana, "Ama" was arrested, starved, beaten and left for dead because she was a lesbian. Her girlfriend was poisoned to death, with the words "Bitch, go find a man in hell" scrawled on the wall of her home. Ama spent all the money she had to fly to America, and asked for asylum at JFK airport. She was interviewed and found to have a credible fear of persecution. However, despite the fact that she had no criminal history, a compelling and meritorious asylum claim, and every reason to appear for her removal proceedings, she spent almost 100 nights in immigration detention before being paroled.
>
> Shortly thereafter, an immigration judge granted her asylum, finding that it was too dangerous for her to live in Ghana as a lesbian. Now, she lives safely in the United States. While she studies to be a nurse, she volunteers with a medical facility that helps LGBT people in New York.

The merits of Ama's case were very similar to Edward's, yet she spent more than 3 months in detention waiting to be paroled. She states that during that time, she was treated "like a criminal," and that she felt, "terrified, confused, and humiliated." Prolonged detention for individuals who establish a credible fear of persecution is unnecessary, unwarranted, and expensive.

Edward and Ama's stories are only two of countless examples Immigration Equality could provide as to why asylum is necessary to the LGBT community. At the same time, both stories demonstrate how damaging detention can be to refugees in desperate need of our protection.

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Statement of the American Immigration Lawyers Association

Submitted to the Subcommittee on Immigration and Border Security of the Committee on the Judiciary of the U.S. House of Representatives

Hearing on "Asylum Fraud: Abusing America's Compassion?"

February 11, 2014

The American Immigration Lawyers Association (AILA) submits this statement to the Subcommittee on Immigration and Border Security. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 13,000 attorney and law professor members.

The United States has one of the most comprehensive and effective systems to screen and review applicants for asylum status. Recently, however, critics of the asylum system have asserted that too many people are coming to the United States to take advantage of our asylum seeking process. Some have proposed increasing the use of mandatory detention for asylum seekers or further restricting eligibility or adding barriers for asylum. These steps will not necessarily improve national security, and will come at the cost of exacerbating current problems with the asylum process that keep many who have survived trauma and persecution waiting for years until their cases are heard.

AILA is concerned that assertions about fraud are unfounded and questions whether additional measures to address fraud are necessary. Effective anti-fraud measures already exist in the adjudications process, and arbitrary or harsh rules often prevent bona fide asylum seekers from seeking, much less obtaining the protection they need. Asylum seekers currently undergo numerous screenings and face procedural hurdles such as the one-year filing deadline that denies protection regardless of the actual merits of their asylum claim. They face a backlog waiting for their cases to be adjudicated by asylum officers and immigration courts, and many are left to maneuver the complex legal process without legal counsel.

The current asylum system needs to be reformed, but reforms should be done in a manner that safeguards the integrity of the asylum system without compromising protections for refugees the United States has committed to protect. AILA recommends the following improvements:

- Eliminate the arbitrary one-year filing deadline
- Increase funding for immigration courts to reduce wait times to process asylum cases
- Increase access to legal counsel for asylum seekers

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AMERICAN
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ASSOCIATION

Process of Applying for Asylum

Welcoming and protecting those fleeing persecution is a deeply rooted American value that has defined our country since its founding and is firmly established in our laws. In 1968, the U.S. acceded to the 1967 U.N. Protocol Relating to the Status of Refugees, which extends the obligation of *non-refoulement*, or the duty not to return a refugee to a country where their life or freedom would be threatened on the basis of certain grounds – an obligation that was first enshrined in the 1951 Convention Relating to the Status of Refugees. Additionally, the U.S. is bound under the U.N. Convention Against Torture not to return an individual to a country where the person would likely face torture. In 1980, the U.S. enacted the Refugee Act to bring its laws into compliance with international law and has continued to be a leader in the area of asylum and refugee protections internationally.

The current asylum process provides three paths for receiving asylum: affirmatively through an asylum officer with the U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS), defensively in removal proceedings before an immigration judge, or derivatively as the spouse or child of an asylee. Individuals in removal proceedings cannot apply for asylum to USCIS; rather, they must present their asylum claim to an immigration judge with the Executive Office for Immigration Review (EOIR) in the Department of Justice (DOJ). Individuals who arrive at a port of entry or in between the ports without proper immigration documents have an additional hurdle and must first meet a "credible fear" standard before they can apply for asylum.[1]

The burden of proof is on asylum seekers to show that they meet the legal definition of a refugee. Fear of harm or torture alone is not enough to be granted asylum. Individuals must show that they are outside of their country of nationality and are unable or unwilling to return to and avail themselves of protection from their country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Asylum seekers provide in detail information about their past activities, associations, country conditions, experiences of persecution, and fear of future persecution. Furthermore, even if the applicants meet the legal definition, they are barred from receiving asylum if they pose a danger to the community or national security, have engaged in the persecution of others, have engaged in terrorist activity, have been convicted of a particularly serious crime, or firmly resettled in another country prior to arriving in the United States.

Additional hurdles are present throughout the process. In 1996, with the passage of the Illegal Immigration and Immigrant Responsibility Act, Congress created a one-year filing deadline for asylum seekers. Asylum seekers are denied an opportunity to have their application evaluated if

[1] AILA expressed concerns in the credible fear process for asylum seekers subject to expedited removal in our statement to the House Judiciary Committee for the December 12, 2013 hearing on the asylum process at the border. See AILA Statement to HJC on the hearing "Asylum Abuse: Is it Overwhelming Our Borders?" December 12, 2013. Accessible at http://www.aila.org/content/default.aspx?docid=46731

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they fail to file their claim within one year of arrival, except in limited circumstances, regardless of the merits of their asylum claim. If an asylum officer denies the claim, and the individual does not have valid immigration status, the individual is referred to immigration court for formal proceedings. If the individual raises the asylum claim, then it is litigated in immigration court with an immigration judge and government trial attorney.

With the passage of the REAL ID Act of 2005, asylum officers and immigration judges now consider the following factors among others in the assessment of an applicant's credibility – demeanor, responsiveness, consistency between oral and written statements, any inaccuracy in statement –factors that may be impacted by an individuals' cultural misunderstandings, trauma from flight and past persecution, and language barriers. Individuals not found to be credible by asylum officers have an adverse credibility finding that creates an additional barrier to protection even if their case is heard in the immigration courts.

All asylum seekers are subject to numerous screenings and background checks. During the application stage, USCIS conducts fingerprinting and background security checks. Before individuals are granted asylum, their names and fingerprints are checked through immigration, law enforcement, and intelligence databases housed in DHS, FBI, Department of Defense, Department of State, CIA and other agencies.[2] They are interviewed by the USCIS asylum officer to determine their credibility and eligibility for asylum. Decisions made by the asylum officer are reviewed by supervisory asylum officers under USCIS.

Many legitimate asylum seekers, as well as asylees seeking adjustment to lawful permanent status or petitioning for their family members, have not been able to access these protections and benefits due to allegations that they provided "material support" to terrorist organizations. Extremely broad definitions of what constitutes "material support" long placed thousands refugees and asylum seekers in a state of uncertainty, unable to adjust their status or to bring family members to the United States, for activities such as providing medical treatment under coercion or paying to escape persecution.[3] Terrorism-related bars should target those who present actual threats and not sweep in innocent individuals deserving of protection. On February 5, 2014, DHS announced new exemptions for individuals who provided "limited" or "insignificant" material support but have passed all relevant background checks.[4] It is yet to be seen how these exemptions are going to be applied to cases and provide needed protections for bona fide asylum seekers.

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[2] Testimony of USCIS Deputy Director Lori Scialabba, ICE Deputy Director Daniel Ragsdale, and CBP Office of Border Patrol Chief Michael Fisher, before House committee on the Judiciary Hearing, "Asylum Abuse: Is It Overwhelming our Border?" December 12, 2013.

[3] Human Rights First, *Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States*. November 2009.

[4] 79 FR 6913 (2/5/14); 79 FR 6914 (2/5/14)

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Improving the Asylum Process
AILA recommends the following reforms to ensure asylum seekers have a meaningful opportunity to seek protection from persecution.

- **Eliminate the arbitrary one-year filing deadline**. Individuals are barred from asylum if they did not apply within one year of their last arrival into the United States and if they do not fall under limited exceptions. The arbitrary one-year cutoff denies protection to asylum seekers who, due to language barriers, effects of trauma, and lack of community among many reasons, are unable to meet the deadline, keeping many deserving asylum seekers from being granted protection. Although there are exceptions, the exceptions are often not fully analyzed or considered by USCIS asylum officers, resulting in referrals to the immigration courts and the unnecessary expenditure of government resources by pushing the claims of legitimate asylum seekers into the overburdened immigration court docket. Congress should eliminate the one-year filing deadline and efficiently allocate limited time and resources to assessing the actual merits of asylum applications.

- **Increase funding for immigration courts**. The immigration court system and funding for the courts have not kept up with the dramatic increases in immigration enforcement over the past two decades. As of December 2013, the immigration courts had a backlog of 357,167 cases that far exceeds its capacity.[5] There are only about 250 immigration judges handling this enormous caseload, and immigration judges handle far higher caseloads than other administrative law judges, sometimes twice the number of cases per year. There are even fewer attorney advisors to assist immigration judges in handling such an immense case load. As a result, asylum seekers frequently wait years after their initial arrival before their asylum hearing is conducted. For asylum seekers, the backlog results in long wait times during which they face an uncertain future. For those in detention, the backlog of cases can result in longer detention times and compound the damaging trauma experienced by victims of persecution. Congress should fund the immigration courts at a level commensurate with its funding for enforcement to properly address court backlogs and provide adequate staffing and resources for the immigration courts. In addition, USCIS should hire sufficient additional Asylum Officers and train them to meet the burgeoning need that is placing stress on the entire asylum system.

- **Increase access to legal counsel**. The lack of legal counsel for respondents in immigration courts contributes to the backlog, and to the prolonged state of uncertainty for many asylum seekers. Six out of ten respondents, including asylum-seekers, children, and mentally-ill respondents, appear before immigration courts without legal counsel. Asylum seekers, dealing with the aftermath of surviving persecution or living in fear of return, are left to navigate our laws and to present their claims with no legal

[5] Transactional Records Access Clearinghouse. Immigration Court Backlog Tool. Accessed February 10, 2014 at http://trac.syr.edu/phptools/immigration/court_backlog/

representation, while representation by an attorney is the "single most important factor" affecting the result in an asylum case.[6] Adequate consideration and resources should be given to facilitate the representation of asylum-seekers in their cases before immigration courts.

[6] Jaya Ramji-Nogales, Andrew Schoenholtz & Philip Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 Stan. L. Rev. 295, 340-41 (2007).

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MEMORANDUM February 6, 2014

To: U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration and Border Security
Attention: David Shahoulian

From: Ruth Ellen Wasem, Specialist in Immigration Policy, 7-7342

Subject: **Trends in Asylum Claims**

This memorandum provides a times series analysis of asylum trends as background for the hearing "Asylum Fraud: Abusing America's Compassion?" that the Committee on the Judiciary Subcommittee on Immigration and Border Security is holding on February 11, 2014. As requested, the memorandum offers separate analysis of trends in asylum claims from several of the top source countries: the Peoples' Republic of China (PRC), El Salvador, Guatemala, Haiti, Honduras, and Mexico.

Overview of Current Policy

Foreign nationals present in the United States may apply for asylum with United States Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS) after arrival into the country, or may seek asylum before the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) during removal proceedings.[1] Aliens apprehended along the border or arriving at a U.S. port who lack proper immigration documents or who engage in fraud or misrepresentation are placed in expedited removal;[2] however, if they express a fear of persecution, they receive a "credible fear" hearing with an USCIS asylum officer and—if found credible—are referred to an EOIR immigration judge for a hearing.[3]

Affirmative Applications

An asylum seeker who is in the United States and not involved in any removal proceedings may apply for asylum by filing an I-589 asylum application form with USCIS. USCIS asylum officers make their determinations regarding the affirmative applications based upon the application form, the information received during the interview, and other potential information related to the specific case (e.g., information about country conditions). If the asylum officer approves the application and the alien passes

[1] CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*, by Ruth Ellen Wasem.

[2] CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

[3] For more on "credible fear" in the context of expedited removal, see U.S. Congress, House Committee on the Judiciary, *Asylum Abuse: Is It Overwhelming Our Borders?*, testimony of Ruth Ellen Wasem, 113th Cong., 1st sess., December 12, 2013.

the identification and background checks, then the alien is granted asylum status. The asylum officer does not technically deny asylum claims; rather, the asylum applications of aliens who are not granted asylum by the asylum officer are referred to EOIR immigration judges for formal removal proceedings.

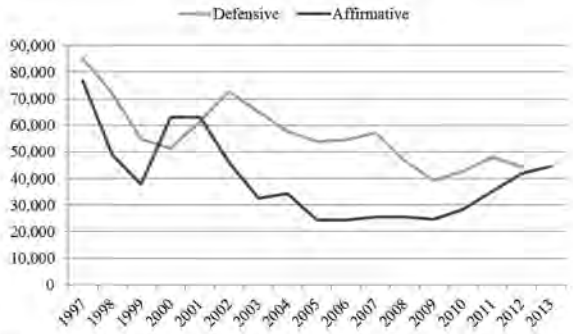
Defensive Applications

Defensive applications for asylum are raised when an alien is in removal proceedings and asserts a claim for asylum as a defense to his/her removal. EOIR's immigration judges and the Board of Immigration Appeals (BIA), entities in DOJ, have exclusive control over such claims and are under the authority of the Attorney General. Generally, the alien raises the issue of asylum during the beginning of the removal process. The matter is then litigated in immigration court, using formal procedures such as the presentation of evidence and direct and cross examination. If the alien fails to raise the issue at the beginning of the process, the claim for asylum may be raised only after a successful motion to reopen is filed with the court. The immigration judge's ultimate decision regarding both the applicant/alien's removal and asylum application is appealable to the BIA.

Statistical Analysis of Asylum Trends

Requests for asylum – both USCIS affirmative and EOIR defensive – have dropped since the mid-1990s, as **Figure 1** depicts. There was an uptick in the early 2000s, but the decreasing trend overall continued until 2009. There has been a modest increase in both USCIS affirmative and EOIR defensive since 2010, but the numbers have not yet reached the levels of the early 2000s. *EOIR defensive cases include unapproved asylum cases that USCIS has referred to them as well as the credible fear claims made during expedited removal, so these data are not additive.*

Figure 1. Trends in Asylum Requests
FY1997-FY2013



Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System and data from the EOIR Office of Planning, Analysis and Technology.

Note: There are FY2013 data for USCIS, but not for EOIR.

Trends for Six Selected Countries

For many years, most foreign nationals who sought asylum in the United States were from the Western Hemisphere, notably Central America and the Caribbean. From October 1981 through March 1991, for example, Salvadoran and Nicaraguan asylum applicants totaled over 252,000 and made up half of all foreign nationals who applied for asylum with the former Immigration and Naturalization Service (INS.)[4] In FY1995, more than three-fourths of asylum cases filed annually came from the Western Hemisphere.[5]

In FY1999, the People's Republic of China (PRC) moved to the top of the source countries for asylum claims. As the overall number of asylum seekers fell in the late 1990s, the shrinking numbers from Central America contributed to the decline. Simultaneously, the number of asylum seekers from the PRC began rising and reached 10,522 affirmative cases in FY2002. The PRC remained the leading source country throughout the 2000s.

This section of the memorandum focuses on six major source countries: the PRC, El Salvador, Guatemala, Haiti, Honduras, and Mexico. The analysis presents data on affirmative and defensive claims for each of these source countries. Bear in mind that EOIR defensive cases included many asylum claimants that first appeared as affirmative cases with USCIS. As a consequence, defensive claims display an echo effect of the spikes and valleys in the affirmative cases.

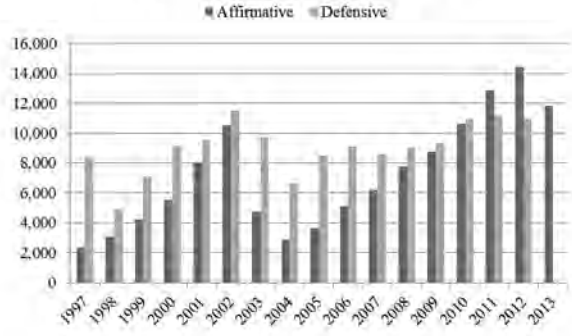
[4] CRS Report 93-233, *Asylum Seekers: Haitians in Comparative Context*, by Ruth Ellen Wasem, (Archived).

[5] CRS Report 94-314, *Asylum Facts and Issues*, by Ruth Ellen Wasem, (Archived).

People's Republic of China

PRC asylum cases increased from FY1997 to FY2002 for both USCIS affirmative and EOIR defensive claims respectively (**Figure 2**). After a decline in the early part of the century, asylum requests from PRC nationals began rising in FY2005 and peaked in FY2011 and FY2012. The ebbs and flows of PRC asylum seekers over the period, however, exhibit different patterns depending on the asylum gateway, as the affirmative request fluctuated more than the defensive requests.

Figure 2. Asylum Seekers from China



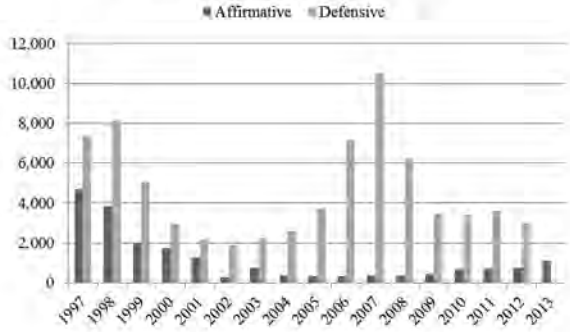
Source: CRS presentation of data from the USCIS Directorate of Refugee, Asylum, and International Operations and the Office of Planning, Analysis and Technology in the Executive Office for Immigration Review.

Note: The left axis scale varies from country chart to country chart (e.g., 16,000 for the PRC and 2,000 for Honduras) to better illustrate the variation over time within a country, rather than enabling clearer country-to-country comparisons.

El Salvador

Affirmative asylum claims from El Salvador steadily declined from a high of 4,706 in FY1997 to a low of 315 in FY2005, as **Figure 3** shows. These affirmative numbers have risen slightly to 1,115 affirmative requests with USCIS from Salvadorans in FY2013. Overall, EOIR defensive asylum claims are down from FY1997 to FY2012 by 59.5% for Salvadorans, after peaking at 10,522 in FY2007. There were 2,991 asylum cases filed with EOIR in FY2012.[6]

Figure 3. Asylum Seekers from El Salvador



Source: CRS presentation of data from the USCIS Directorate of Refugee, Asylum, and International Operations and the Office of Planning, Analysis and Technology in the Executive Office for Immigration Review.

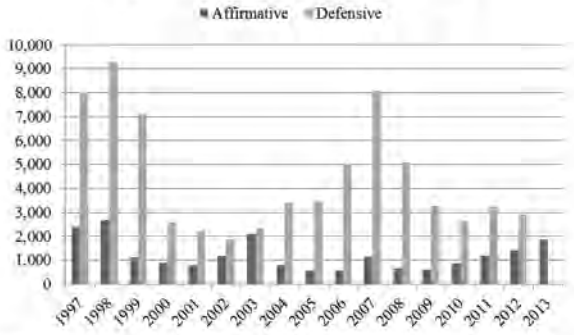
Notes: The left axis scale varies from country chart to country chart (e.g., 16,000 for the PRC and 2,000 for Honduras) to better illustrate the variation over time within a country, rather than enabling clearer country- to-country comparisons.

[6] EOIR has not yet released the FY2013 data, which are likely to reflect an increased number of Salvadoran "credible fear" claims found in the context of expedited removal. U.S. Congress, House Committee on the Judiciary, *Asylum Abuse: Is It Overwhelming Our Borders?*, testimony of Ruth Ellen Wasem, 113th Cong., 1st sess., December 12, 2013.

Guatemala

The pattern for Guatemalan asylum seekers has been similar to that of the Salvadorans, though the numbers are somewhat lower. Overall, the EOIR defensive levels have declined by 68.8% since peaking at 9,267 in FY1998. Affirmative cases filed by Guatemalans with USCIS exhibit more consistent levels over time and have decreased by 30.6% since peaking at 2,666 in FY1998.[7]

Figure 4. Asylum Seekers from Guatemala



Source: CRS presentation of data from the USCIS Directorate of Refugee, Asylum, and International Operations and the Office of Planning, Analysis and Technology in the Executive Office for Immigration Review.

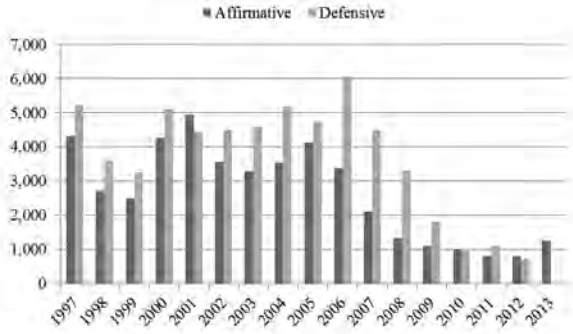
Notes: The left axis scale varies from country chart to country chart (e.g., 16,000 for the PRC and 2,000 for Honduras) to better illustrate the variation over time within a country, rather than enabling clearer country- to-country comparisons.

[7] EOIR has not yet released the FY2013 data, which are likely to reflect an increased number of Guatemalan "credible fear" claims found in the context of expedited removal. U.S. Congress, House Committee on the Judiciary, *Asylum Abuse: Is It Overwhelming Our Borders?*, testimony of Ruth Ellen Wasem, 113th Cong., 1st sess., December 12, 2013.

Haiti

Many Haitians who flee Haiti are interdicted by the U.S. Coast Guard and do not appear among those who claim asylum in the United States.[8] The number of asylum seekers from Haiti who do reach the United States has not fluctuated greatly over the period. Both the USCIS affirmative and EOIR defensive claims, however, have each evidenced a drop since FY2006, when defensive claims peaked at 6,056. Affirmative claims hit 4,938 in FY2001 and surpassed the number of defensive claims that year, as **Figure 5** illustrates. There has been a slight uptick in Haitian asylum cases filed with USCIS in FY2013, as 1,261 Haitians filed.

Figure 5. Asylum Seekers from Haiti



Source: CRS presentation of data from the USCIS Directorate of Refugee, Asylum, and International Operations and the Office of Planning, Analysis and Technology in the Executive Office for Immigration Review.

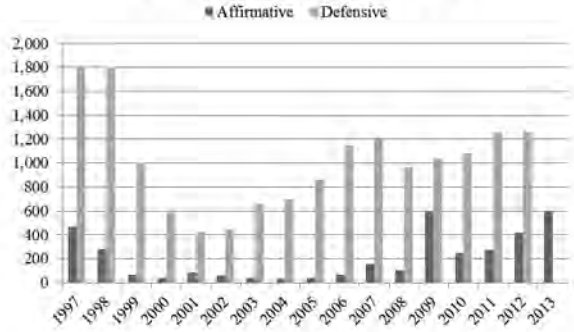
Note: The left axis scale varies from country chart to country chart (e.g., 16,000 for the PRC and 2,000 for Honduras) to better illustrate the variation over time within a country, rather than enabling clearer country- to-country comparisons.

[8] Since FY1998, the Coast Guard had interdicted over 1,000 Haitians annually. For further discussion of Haitian interdiction, see CRS Report RS21349, *U.S. Immigration Policy on Haitian Migrants*, by Ruth Ellen Wasem.

Honduras

As the scale of 2,000 on the left axis shows, there have been much lower levels of asylum seekers from Honduras than from the other 5 countries over the period analyzed. As **Figure 6** shows, USCIS affirmative asylum cases filed by Hondurans peaked at 599 in FY2013, after a prior high of 598 in FY2009. Honduran defensive cases exhibit a different pattern over time, as they peaked at 1,801 in FY1998. The number of EOIR defensive cases rose slightly in FY2012.[9]

Figure 6. Asylum Seekers from Honduras



Source: CRS presentation of data from the USCIS Directorate of Refugee, Asylum, and International Operations and the Office of Planning, Analysis and Technology in the Executive Office for Immigration Review.

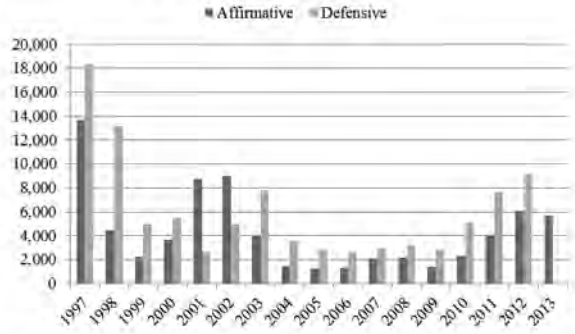
Note: The left axis scale varies from country chart to country chart (e.g., 16,000 for the PRC and 2,000 for Honduras) to better illustrate the variation over time within a country, rather than enabling clearer country- to-country comparisons.

[9] EOIR has not yet released the FY2013 data, which are likely to reflect an increased number of Honduran "credible fear" claims found in the context of expedited removal. U.S. Congress, House Committee on the Judiciary, *Asylum Abuse: Is It Overwhelming Our Borders?*, testimony of Ruth Ellen Wasem, 113th Cong., 1st sess., December 12, 2013.

Mexico

The number of asylum seekers from Mexico remains down from the high point depicted in FY1997. As **Figure 7** shows, EOIR defensive claims reached 18,389 and USCIS affirmative claims hit 13,663 in FY1997. After dropping, Mexican affirmative cases evidenced a moderate surge in FY2001 (8,747) and FY2002 (8,977), but the overall trend line has declined by 58.5% from FY1997 through FY2013. The number of defensive claims has decreased as well, by 50.0% from FY1997 through FY2012. In the past few years, however, there has been a slow increase in both affirmative and defensive asylum claims from Mexico, comparable to the levels in FY2001 and FY2002.

Figure 7. Asylum Seekers from Mexico



Source: CRS presentation of data from the USCIS Directorate of Refugee, Asylum, and International Operations and the Office of Planning, Analysis and Technology in the Executive Office for Immigration Review.

Note: The left axis scale varies from country chart to country chart (e.g., 16,000 for the PRC and 2,000 for Honduras) to better illustrate the variation over time within a country, rather than enabling clearer country- to-country comparisons.

The asylum patterns of these six selected source countries over the period varied considerably, each ebbing and flowing at different points in time. All but the PRC had an overall decrease in asylum cases since FY1997, though a recent uptick is appearing from several source countries. This data analysis suggests that conditions in the major source countries—whether economic, environmental, political, religious or social—warrant further study to understand the driving forces behind asylum seekers.[10]

[10] For further background, see the "Country Reports on Human Rights Practices," which DOS submits annually to the U.S. Congress in compliance with §116(d) and §502B(b) of the Foreign Assistance Act of 1961, as amended, and §504 of the Trade Act of 1974, as amended.

Statement in Support of U.S. Commitment to Refugees

In his final Presidential address to the American people, Ronald Reagan described the United States as a "shining city on a hill" that is "still a beacon, still a magnet for all who must have freedom, for all the pilgrims from all the lost places who are hurtling through the darkness, toward home." President Reagan's belief in America's role as a refuge for the persecuted went beyond his words. Thirty three years ago, he signed into law the Refugee Act of 1980, which passed Congress with strong bi-partisan support, enshrining into domestic law America's historic commitment to protect the persecuted.

The 2012 Republican National Platform reaffirmed our belief that American exceptionalism is demonstrated in our commitment to freedom and human dignity. Our platform echoed President Reagan's words by stating, "To those who stand in the darkness of tyranny, America has always been a beacon of hope, and so it must remain. That is why we strongly support the work of the U.S. Commission on International Religious Freedom, established by Congressional Republicans to advance the rights of persecuted peoples everywhere."

The United States has granted asylum and provided resettlement to thousands of refugees who have fled political, religious, ethnic, racial and other persecution. These refugees have come from Burma, China, Colombia, Cuba, Liberia, Iran, Iraq, Russia, Rwanda, Sierra Leone, Sudan, Viet Nam and other places where people have been persecuted for who they are or what they believe. In some cases, they are people who stood with America, against tyranny, even when it was dangerous or unpopular in their own country.

With courage, determination and industriousness, these refugees and their families have been able to rebuild their lives in safety and freedom in the United States. They have enriched their communities and the nation by creating and building new technologies and businesses, supporting our religious and community institutions, enriching our political dialogue, and diversifying our neighborhoods.

It should be obvious to all that our immigration system is in dire need of an overhaul. We must have fair and enforceable immigration laws that reflect our national interest and that uphold core American values and our history as a country committed to humane treatment and dignity of the individual. Our policies toward refugees are at the heart of our American values and, as the 2010 Council on Foreign Relations Independent Task Force on Immigration Policy stressed, the U.S. commitment to protect refugees from persecution "is enshrined in international treaties and domestic U.S. laws that set the standard for the rest of the world; when American standards erode, refugees face greater risks everywhere."

As Congress and the President consider reform of our immigration laws and policy, they have the opportunity to remove or reform barriers and challenges that are preventing legitimate refugees from receiving this country's protection. Congress should eliminate unjust barriers that deny or delay U.S. protection to legitimate refugees, support a fair and timely decision-making process for those seeking refuge, and implement the recommendations of the U.S. Commission on International Religious Freedom. In doing so, they would eliminate unnecessary restrictions on liberty that are inconsistent with this country's values.

As Republicans, we stand with President Reagan and our Party's platform, and especially with those oppressed people who yearn to live in freedom.

The Honorable Carlos Gutierrez

Governor Tom Ridge

Senator Mel Martinez

Dr. Paula Dobriansky

Governor Sam Brownback

Governor Jeb Bush

Grover Norquist

The Honorable Jim Ziglar

The Honorable Alberto Mora

Suhail A. Khan

The Honorable Janet Napolitano
Secretary of Homeland Security
Washington, D.C. 20528

August 23, 2013

Dear Secretary Napolitano,

We write on behalf of the 3,500 people in the United States who have already passed the difficult test to prove they are refugees and are waiting to go through additional security checks so they can finally become permanent residents of the United States and reunite with their families. We also write on behalf of refugees who remain in dangerous situations abroad, who remain eager to prove to the Department of Homeland Security that they pose no terrorist or security threat to the United States. All of these refugees have been stuck in legal limbo by immigration law definitions of "terrorism" that are widely acknowledged to be harming refugees the United States is committed to protect.

We urge you to use the authority designated to you by Congress to finally fix this problem for the thousands of refugees and asylees who have been mislabeled as "terrorists" before you leave office in September. The principles of fairness and family unity should be applied to these refugees and asylees, who were admitted to this country legally and have been waiting for as long as ten years to obtain permanent legal status and reunite with their spouses and children.

In 2001, Congress enacted legislation that significantly broadened the definition of "terrorist activity." Because the definition was so broad, it encompassed some activities that had no real-life connection to terrorism. Many refugees seeking safety – including those with family already in the United States – were barred from entering the U.S., and many refugees and asylees already offered protection and living in the U.S. were barred from obtaining green cards and reuniting with family members. A bipartisan coalition in Congress led by Senators Patrick Leahy (D-VT) and Jon Kyl (R-AZ) amended the law in 2007 to authorize the Administration to exempt persons with no actual connection to terrorism from the broad anti-terrorism provisions of the immigration law.

Last year, in commemoration of the 60th anniversary of the United Nations Refugee Convention, the Administration pledged to "significantly reduce" cases that are on hold by the end of fiscal year 2012, and to review, by the end of calendar year 2012, current interpretations of the immigration law's national security exclusion grounds "to better ensure that those in need of protection retain eligibility for it." We welcomed your August 2012 announcement that refugees in the United States already granted protection whose applications for permanent residence or family reunification have been on hold for years will finally be given the opportunity to pass all required security and background checks to have their cases adjudicated on a case-by-case basis.

Today, we are disappointed that this policy announcement has not yet resulted in a significant reduction in the number of cases on hold, and note that the hope the August announcement gave to these refugees has faded. We urge you to take the following steps to fully implement the exemption authority currently available under the law:

- Sign additional group exemptions – many of which have been under consideration for months or even years – to allow the prompt adjudication of cases of individuals who do not bear any responsibility for human rights abuses or crimes and pose no threat to the security of

the United States. Progress in this area is particularly urgent with respect to refugees who are applying for asylum or resettlement now.

- Ensure prompt implementation of the August 2012 exemption announcement for refugees and others who were already granted asylum or other lasting status and whose applications for permanent residence or family reunification have been on hold for 10 years or more in some cases.

- Allow US Citizenship and Immigration Service officers to examine and provide relief where appropriate to individuals – on an individual, case-by-case basis—who had voluntary associations with "Tier III" groups. This includes refugees abroad in urgent need of resettlement and those currently seeking protection here in the United States, who were not helped by the recent change in policy and are still waiting for their cases to be considered. The "Tier III" groups with which these refugees were associated are not designated as terrorist groups or treated as such by the U.S. government in any other context. In many cases they are long defunct or are groups the U.S. government sympathizes with and even supports. The current approach, involving centralized review of each Tier III group before an individual who engaged in voluntary activities on behalf of the group can be granted an exemption, has proved to be unworkable.

- Review and revise current legal interpretations of what specifically constitutes "material support" under current immigration law. Statutory interpretations should and in our view can easily be brought into line with the purpose of the law, which was to exclude and deny relief to persons who are responsible for or provide meaningful support to terrorist acts or groups and who pose a terrorist threat to the U.S.

This is a matter of compelling concern to each of us and to the organizations with which we are associated, and we urge you in your last months as Secretary to finally resolve this problem that has caused so much pain and uncertainty for so many. On grounds of compassion, good policy and the rule of law, we call on you to resolve this matter quickly so that refugees– including those who remain at risk abroad – can finally find safety in the United States.

Sincerely,

Laura W. Murphy, Director
American Civil Liberties Union Washington Legislative Office

Richard Foltin, Director of National and Legislative Affairs
American Jewish Committee

Msgr. John Enzler, President and CEO
Catholic Charities of the Archdiocese of Washington DC

Curt Goering, Executive Director
Center for Victims of Torture

Alexander D. Baumgarten, Director, Office of Government Relations
The Episcopal Church

Deborah Stein, Director
Episcopal Migration Ministries

Tsehaye Teferra, President
Ethiopian Community Development Council, Inc.

Tina Ramirez, President
Hardwired, Inc.

Mark Hetfield, President and CEO
HIAS

Eleanor Acer, Director, Refugee Protection Program
Human Rights First

Christine Cooney Mansour, Legal Director
Human Rights Initiative of North Texas

Bill Frelick, Refugee Program Director
Human Rights Watch

Susan Roche, Executive Director (Interim)
Immigrant Legal Advocacy Project

Victoria Neilson, Legal Director
Immigration Equality

Sharon Waxman, Vice President of Public Policy and Advocacy
International Rescue Committee

Armando Borja, National Director
Jesuit Refugee Service/USA

Ann Buwalda, Esq., Executive Director
Jubilee Campaign USA

Alex Boston, Executive Director
Just Neighbors

Linda Hartke, President and CEO
Lutheran Immigration and Refugee Service

Leith Anderson, President
National Association of Evangelicals

Mary Meg McCarthy, Executive Director
National Immigrant Justice Center

Hans Hogrefe, Chief Policy Officer and Washington Director
Physicians for Human Rights

Michel Gabaudan, President
Refugees International

Dr. Russell Moore, President
Southern Baptist Ethics & Religious Liberty Commission

Michael Horowitz, CEO and Senior Fellow
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Material submitted by the Honorable Trey Gowdy, a Representative in Congress from the State of South Carolina, and Chairman, Subcommittee on Immigration and Border Security

ANNALS OF IMMIGRATION

THE ASYLUM SEEKER

For a chance at a better life, it helps to make your bad story worse.

BY SUKETU MEHTA

I met Caroline one Friday evening in the cafeteria of the upscale Manhattan supermarket where she had just started working. She was a twenty-something African immigrant without papers; we'd recently been introduced by a mutual acquaintance. "Hi, Carol—" I stopped myself, seeing the look on her face.

Caroline was living three lives: as Cecile Diop, a woman with papers who had been in the country for ten years; as Caroline the African rape and torture victim; and as herself, a middle-class young woman who wanted to go to college and make a life in America. It was a continuous exercise in willed schizophrenia. (Names and other identifying details have been changed throughout.)

I tried again: "Hi, Cecile!"

Cecile Diop, a fellow-expat from central Africa, had lent Caroline her Social Security number so that she could get the job. Caroline had showed the store manager Cecile's I.D., but he couldn't tell the difference between the two women. She was expecting her first paycheck, which she would give to Cecile to cash. "Some of them take half," Caroline said, about such arrangements between immigrants.

"I cannot get fired," she explained. "The owner of the name will have trouble."

Caroline had big eyes, an easy smile, and short hair dyed red-blond. She was dressed in a denim jacket and jeans and a tight sweater. She walked me around the two floors of the giant supermarket, pointing out all the places where samples were given out. She urged me to take some dried fruit. I pierced a dried-banana slice with a toothpick; it was nearly inedible. Caroline didn't believe in all this organic and natural stuff. "People in the United States are a little . . ." She pointed a finger at her head and turned it in circles.

At the supermarket, she made ten dollars an hour. After Social Security and medical deductions—which were of no value to Caroline, only to Cecile—she didn't have enough money to eat at the store, even with the twenty-per-cent employee discount. "I can never eat the hot food," she said. It cost $7.99 a pound. So, surrounded by food of every description from every country, Caroline brought lunch from home.

As we left the store, Caroline, as an employee, had to submit her bag to a guard for an inspection. "Do you want me to take things out?" she asked. "I can see the bottom," the guard responded, and waved her on. Another guard, a white woman, trying to soften the humiliation of the inspection, made small talk: "I've been looking all over for that kind of handbag for my daughter. Where did you get it? Herald Square?"

Caroline had come to the United States the previous summer for a family wedding. When her parents left, she stayed, even after her tourist visa expired.

Now she was working on a story—a four-page document, in French, that she would give to a lawyer she had hired, and to immigration officials—saying that she was beaten and raped more than once by government soldiers in her country. "I have never been raped," she admitted, giggling with embarrassment.

A clerk in Caroline's lawyer's office had suggested, "Why don't you say you were circumcised?" Caroline told her that female circumcision wasn't practiced in her country. So she had learned how to play a rape victim. She had pangs about lying: "Telling that story makes me sad, because I know it's true for someone."

A friend of mine, a former lawyer who has represented people in asylum cases, had recently told me about the difficulty of making a persuasive asylum plea these days. "The immigration people know the stories. There's one for each country. There's the Colombian rape story—they all say they were raped by the FARC. There's the Rwandan rape story, the Tibetan refugee story. The details for each are the same."

It is not enough for asylum applicants to say that they were threatened, or even beaten. They have to furnish horror stories. It's not enough to say that they were raped. The officials require details. Inevitably, these atrocity stories are inflated, as new applicants for asylum get more inventive about what was done to them, competing with the lore that has already been established, with applicants whose stories, both real and fake, are so much more dramatic, whose plight is so much more perilous, than theirs.

We went to a Brazilian restaurant nearby for a drink and supper. Caroline ordered a coconut cocktail and a salad with chicken.

"I got my paycheck. Want to see it?" She pulled it out of her bag. She'd worked 64.42 hours in the past couple of weeks, at ten dollars an hour. After deductions, she was left with a total of $521.69 to give to "the owner of the name." She was hoping that the real Cecile wouldn't take too big a cut; maybe she wouldn't take any cut at all, even though she was only an acquaintance.

I asked Caroline how, with a thousand dollars a month, she was going to pay the rent, four hundred and fifty dollars a month, for her one-bedroom apartment in the Bronx; cover food and transportation; and pay her lawyer, who was charging three thousand dollars. It turned out that Caroline's family had to put money in a credit-card account she has back in Africa. And she had been through worse times. For a week, when she was living in a friend's apartment, she had no money for food. She found some rice in the kitchen, and ate it with the only available condiment—sugar. When December came, she had no winter clothes—only a thin jacket. "We don't have winter," she said of the climate in central Africa. One of the teachers at the New York Public Library, where she went for English classes, saw her shivering, and gave her one of her old coats. "It's funny," Caroline said, and laughed, thinking about those times.

Caroline's parents are supporters of a controversial opposition leader. Government soldiers ransacked their house in the city twice. Caroline remembered the soldiers as being very stupid, and from the countryside. Although they didn't rape her or her sisters, once they broke a dish over one sister's head, and they beat her brother. They were looking for her father. One of her sisters, as she was running from the soldiers, felt a sharp stab in her foot; she had stepped on a nail. She kept running, with the nail stuck in her foot.

Atrocity stories get inflated, as applicants compete with the love of other applicants.

BARRY BLITT

One night, Caroline was walking home on a deserted street when a group of five soldiers commanded her to stop. They searched her bag, and found some condoms. "You carry condoms?" they asked. They emptied the contents on the ground, and stole everything she had—her phone, her watch, her earrings, her money. But they let her go.

She had reason to be fearful. Since 1998, millions have died and millions more have been displaced as a consequence of a tangle of regional wars that have roiled central Africa. And in many regions rape has become common. Caroline spoke about why there is so much violence there: "The ministers who are arresting people today—yesterday, you were arresting them." Now Caroline wants to live in America, where it's easier to make money, and easier to live as a woman. She recently had won a prize in a drawing at the supermarket: the right to make up her own schedule for the following week. "I can work more hours!" she told me excitedly.

One day, I met Caroline at the entrance to a public hospital, a place where people aren't denied treatment because they can't pay. There was a large red banner celebrating "uninsured week." It seemed a relatively orderly madhouse.

To buttress her asylum claim, Caroline needed a letter from the hospital stating that she had been treated for torture. For months, she had been attending group and individual psychotherapy sessions, as part of a program for survivors of torture. Today, she was here for a gynecological exam, which is required for rape victims. She showed me her appointment slip, which read "Victim of torture."

Caroline had to come twice a week, for the therapy sessions, and sometimes more often—this week, it was the gynecological exam and an H.I.V. test. But in the elevator she said she couldn't remember the floor where the center for torture survivors was. "When I was a child, I fell and hurt my head," she said. "So I can't remember many things. I show the scar and say it happened because of torture."

In the group-therapy sessions, Caroline didn't volunteer much. Sometimes the stories she heard were hard for her to listen to. She also has individual sessions with a psychiatrist, who prescribes antidepressants: Zoloft, Wellbutrin, trazodone. "She gives me medicine, to make me sleep, to make me calm. I throw it away." How did she know what to tell the doctor? She laughed when I asked her this. She read the symptoms described on the drug inserts—dizziness, sleeping too much or too little, and so forth—and repeated them to the psychiatrist.

She had had the H.I.V. test the previous day. Doctors asked her about the last time she'd had sex, and who it was with. "I don't know his name!" Caroline had cried. "I was raped!"

She recalled, "There was such compassion on their faces."

She came out of the gynecological examination holding a wad of paper: "They gave me tissue." She'd started crying when the doctor told her, "Remove your panties." Seeing her break down, the doctor was almost crying, too. Caroline said, "I don't feel good about it—lying to people." The physical exam, though, had been postponed.

Caroline knew people who really had been raped; she had heard their stories. But she believed that she was far from being the only asylum seeker at the torture survivors' center who was lying or exaggerating. "Everybody's story is a mixture of what is true and what is not," she said. Caroline had been tutored in how to act like a rape victim by her landlady in the Bronx, who hadn't been raped, either, but had successfully applied for asylum. And Caroline was also getting help in crafting her narrative

"Honey, you're doing that thing again where you stare into space and wonder how I talked you into leaving the house."

• •

from a Rwandan man I'll call Laurent, who was a sort of asylum-story shaper among central Africans.

Some months later, on a warm summer evening, I met Laurent at the Senegalese restaurant Patisserie des Ambassades. We waited at an outside table for Caroline to join us.

Laurent was handsome and well mannered, and looked younger than his forty-odd years. He was a man of enormous self-confidence. His mother was Tutsi and his father Hutu; he grew up in Burundi and went to university there, before moving to Rwanda and then to France, where he worked as the manager of an arts troupe. He had relatives who were murdered, and relatives who murdered.

He talked about what had happened to his country. He knew of a man, he said, who had killed his best friend. Afterward, the man was haunted by the thought that he hadn't buried the body. Since he couldn't carry the whole body, he cut off his friend's head and set off toward the cemetery with it. On the way, he was arrested and thrown into prison, with his friend's head for company. "He doesn't take showers," Laurent said.

Laurent had come to America when he was in his thirties. As soon as he arrived at J.F.K. Airport, he started figuring out the ways of America. The first immigration agent he saw asked him where he was going to stay in America. Laurent shrugged. He said he had a phone number for a cousin, and was going to call him when he got out of the airport. The agent asked him to wait in a holding room for further questioning. He sat there with a ragged horde of people from all over the world. He thought that he would be sent back. Then a black immigration agent noticed him, and said, "Hey, brother, go to that agent over there." The second agent stamped his passport and let him in, showing Laurent that it isn't just in Africa that tribe is important.

Now he taught French in public schools. He found the standards very low. "A C student from Rwanda will automatically be an A student here," he said.

When Caroline arrived, she kissed Laurent on both cheeks.

"I will never make appointments with Africans," he said. "They keep saying, 'Oh, this is African time.' " He gestured toward his watch. "Three hours late!"

Caroline had just moved into a new apartment, in Rockaway, and she'd had to go to her apartment from her job, before coming back here. It took her more than an hour each way, by bus and subway, to get to work. What did she do on the commute? Read? Listen to music?

She shut her eyes, and her head drooped. "Sleep."

"You need to be closer to work," Laurent said. "Once you become Caroline, you can move."

But right now she was looking fresh; the evening was beginning to cool, and she was hungry. She ordered a large platter of tilapia and plantains.

Talking about her new apartment, she said, "I have one big problem: cockroaches. I have some in my bag sometime." She held up her purse. "But they are small."

She'd been working hard. The other day, she'd stood for sixteen hours straight, working a double shift. She'd been sneezing, and felt cramps. But she was scared of getting sick. "If something happens to me at work—I'm not me, I'm Cecile. Can you imagine if they call an ambulance?"

Laurent knew several other people who lived or worked under different names. A Kenyan, for instance, had invited Laurent home for dinner, with the people he was staying with. When Laurent called him by his name, he felt his leg being kicked hard under the table. "I know many Africans who come here and don't have any dreams," Laurent said. "They stay in jobs—grocery stores, delivery, selling illegal DVDs, street venders. For girls, it's hair braiding."

Advising Caroline about her asylum narrative, Laurent said, "When you

make up a story, make it yours. No one knows your story better than you." He has helped three people with their stories; two of them were successful in getting asylum.

"To tell you the truth, even my story was made up," he said. He didn't apply for asylum as a Rwandan refugee, because "I didn't want to compromise my family in Rwanda." So his story was about Burundi. "I know the politics of Burundi, and so I could make it up," he said. At the asylum hearing, the officer asked him specific questions about the geography of his narrative: "Where was the police station? Where was the swimming pool?" The officer kept referring to geographical data that she had obtained from the C.I.A., but Laurent's information was more recent, and he told her so. She checked, and found that it was true.

His story was that his house in Burundi was attacked, and he ran away, and, when he went back to look, the house had been bombed. The officer checked the news from the day he was referring to, and, indeed, a house in that part of that city had been bombed. Laurent had read the newspaper report as he was constructing his story: "I made that story mine."

The officer asked him what he would do if she let him stay in the country, and he told her that he was planning to go back to school. This pleased her; evidently, most of the applicants she saw talked about getting jobs. But Laurent knows how to play the African intellectual. He was granted asylum.

"When I got the news that I got the immigration, I was shaking," he said. "I wanted to call my cousin, but I even forgot his number." He had crossed a line between illegal and legal, between being deported and freedom. "Now it's up to me," he added. "Before, it was up to them."

One day, Caroline's lawyer received a letter, saying that a hearing on her application had been scheduled at the asylum office. I offered to go with her, and, at her request, I enlisted a French friend, Marie, to act as her translator. Caroline felt more comfortable making her case in French.

The asylum office was outside the city, in an office block that could have been in any suburb in the country. We took the elevator up to the office and signed in at security. Above the security guard's monitor was a printout that read:

> I can only please one person per day
> Today is not your day
> Tomorrow is not looking good either.

The guard took out Caroline's camera, which was in a brown bag inside her purse. "You can't bring this in here."

"Can we check it?"

"We don't check nothing. You got to find a hiding place for it. Like behind a door."

"What if we take out the battery?"

"You can break it in half, and you still can't bring it in here. You got to find a hiding place."

I hid the camera behind a door, hoping that it would still be there when we came out.

The waiting room was filled with black-and-white posters of African and Latin-American refugees. The signs were a forest of "no"s: No Cell Phones, No Eating, No Drinking, No Cameras, No Chewing Gum. I tried the water fountain; it emitted hot, undrinkable water, like a soup.

Caroline reviewed the dates in her testimony, like a student preparing for the biggest exam of her life. She flubbed one of the dates. Her lawyer hadn't shown up, and she was anxious. "I don't know why I go through it," she said. "I don't know why I didn't just go back. They are racists and xenophobes here."

From other asylum applicants, Caroline had been told to beware of an immigration officer, a man I'll call Novick, who said no to everybody. She hoped she didn't get Novick.

A paralegal from Caroline's lawyer's office appeared, breathless, and apologized for being late. Her name was Mrs. Patel, and she waited along with us. Occasionally, the door to the officers' section opened; the officers who appeared were white men and an Asian woman. When they called out a name, two or three people from the waiting area disappeared inside with them.

Finally, Caroline's name was called out, by a rumpled, middle-aged white officer who stood holding the door open. It was Novick.

We walked down a corridor, past a series of generic, glassed-in offices—one of which had a cover from the Cuban Communist organ *Granma* pasted on its window—into Novick's office. It was bare yet dishevelled, and contained a few files and a pocket atlas lying on the floor. There were no family pictures, and the window blinds were drawn, though through them I could make out a flock of pigeons roosting in a tree. We took our seats, and the interview began.

Novick made a phone call, asking for a government translator, who could monitor Marie's translation, via speakerphone, to make sure that it was accurate.

He turned to Caroline. "Why are you seeking asylum?"

Caroline addressed her responses to Marie: "I am afraid to go back and endure what I have already endured in my country."

"How were you mistreated?"

"I was arrested, beaten, and raped."

"Tell me the details. Why it happened, when."

"The President of my country was about to be overthrown. My father worked with the previous government. They arrested my father, and tortured everybody at home."

"Please provide the details," Novick said. "How were they tortured?"

"They attacked my brother," Caroline said, a tear welling up.

"I'm sorry," Novick said. "How?"

"They shot my brother in the leg." The tears were flowing now, and she asked Novick if he had any tissues. She searched in her handbag. "I used to have it here but . . ." She dug out some tissues she had taken from the bathroom.

"They asked for my father," she continued, wiping her eyes. "My mother and father walked in the door as my brother was being attacked." She went into the logistics of the attack. "They undressed

me and one of my sisters and raped us."

"What about the other sister?" Novick asked.

"They were beating her but not raping her."

"O.K., so what else happened?" Novick was reading the written statement she had submitted earlier, and taking notes.

After the rape, she said, she had to have an abortion.

"Is there any documentary evidence of this abortion?"

"Of course not!"

"Why 'of course'?"

"I don't want any documentary evidence of this abortion because it happened as a result of a rape."

He wanted more details of the rape. Caroline provided them. She also recounted how soldiers arrested her and some other students, and took them to a detention center. "They took me by the head and they put my head against their penis. They spat on us." As she was saying this, her eyes were almost closed. "They wanted us to do things."

"What things?" He wanted specifics. "You were beaten how many times, approximately?"

She said she had had to go to the hospital; he asked her for the evidence. She said it was back in Africa.

"How long will it take for you to get it?"

"I don't know . . . because of all the riots and the pillages." She continued with her story. "They arrested us during one of our meetings and took us to a prison. They beat us up and did horrible things to us."

"Please describe."

"They forced us to do fellatio and they put objects in our genitals. They stamped on us, they trampled us for three days. I suffered many infections because of the rape. My kidneys got infected."

"Did you go to the hospital? Do you have evidence?"

"There is evidence, but I don't have it with me."

Novick was almost finished. "Anything else you want to say?"

"People are not allowed to express their opinion if they're against power," Caroline said of her country.

"What will happen if you return?"

"I might be killed on the road, because I am a member of the opposition."

"Why did you stay all these years?"

"I didn't have the opportunity to leave."

"Why not?"

"I hadn't been invited before. The threats and arrests had intensified."

On the way out, I noticed a stack of brown files outside another officer's door. On one of them was a sheet of paper that said, in large black letters:

CONGRESSIONAL INTEREST!
CONGRESSIONAL INTEREST!
CONGRESSIONAL INTEREST!
CONGRESSIONAL INTEREST!
CONGRESSIONAL INTEREST!

The camera was where I had left it.

We took the bus back to the city with the paralegal, Mrs. Patel. Caroline asked why her lawyer hadn't been there for the hearing. "Because it takes up too much time," Mrs. Patel said. "He can't wait till two in the afternoon."

Caroline closed her eyes, exhausted.

Last year, about fifty thousand people applied for asylum here. Of successful asylum applicants, thirty-two per cent were Chinese. Less than five per cent came from central Africa. In all, 21,113 applicants were given asylum: 11,244 by asylum officers like Novick and 9,869 by immigration judges.

The current political climate in the country is not favorable for asylum seekers. The number of people granted asylum has been decreasing—last year saw almost a thousand fewer successful applications

BLACK RHINOCEROS

The Black Rhinoceros at Brookfield Zoo
Eating sweet potatoes, carrots, and bread
Looked like my uncle's extended family
Crowding around the table at Thanksgiving.

Mrs. Movehill suddenly started crying
On the second-grade bus, which often stalled,
And the next day we had a substitute teacher
Who said that rhinos have poor eyesight

And swivel their tube-shaped ears in all directions
So they can hear their enemies approaching, lions
And people who carve their horns into daggers
Or mash them into pain relievers.

My parents bought my shoes on discount
At Wolinsky & Levy, and so whenever I raised
Either foot my sole said "Damaged."
That's why I kept my feet close to the floor.

When Mrs. Movehill returned, she wore dark
Dresses and told us that the Black Rhinoceros
Is the same muddy color as the White Rhinoceros,
Which is strange, if you think about it, and we did.

What does it feel like to have two horns
Tilting up on a huge head, Mr. Rhinoceros?
You lumber around in your skin of armor
Like an exiled general or a grounded unicorn.

Everyone knows that a pachyderm in peril
Would still rather live in the open savannah.
We can't tell if you are trumpeting forward
Or backward in your scrubby house.

—Edward Hirsch

than the previous year. Although there are no statistics on the number of applications that are fraudulent, immigration attorneys have a sense of the prevalence of such fraud, and the reasons that petitioners perpetrate it. Jason Dzubow is a lawyer who specializes in asylum cases in Washington, D.C., and runs a blog called The Asylumist. "Large parts of their stories are true, and then some people augment cases with things that are not true," he says. Dzubow represents a number of university-educated Ethiopians who were arrested by the dictatorship in their home country, as a significant percentage of their classmates had been. If they go to the asylum coaches, or "case builders," in the immigrant community, they will likely be urged to embellish their stories with tales of torture and beatings, because it is thought that being arrested alone will not make a strong enough case for asylum.

The majority of asylum seekers in America, immigration experts have told me, really would be at serious risk if they were returned to their countries. As for Caroline, there is no doubt that her family was brutally assaulted because of her parents' political affiliations. She does indeed have a "well-founded fear of persecution" if she returns. But she felt that she had to augment the story with a rape because the immigration system can better comprehend such a story; Novick kept asking her for more details of the rape because a rape story was what was expected from a female petitioner from her country. The system demanded a certain kind of narrative if she was to be allowed to stay here, and she furnished it. She had read the expected symptoms of persecution, and repeated them upon command.

A couple of weeks later, Caroline was told to return to the asylum office, to hear the decision on her case. She asked Marie and me to go with her. Which way would her life go? Africa or America? Novick had decided.

This time, there was only one other applicant in the office, a woman in a shalwar kameez. "You have been approved," the clerk told Caroline, handing her a letter. "Congratulations."

But, the clerk warned her, the approval was conditional on a name check. The agency had to make sure that hers was the name on the application. Luckily, the name on the application was the one she was born with, and not any of those which she picked up later.

Caroline was crying, waving her hands in front of her face to cool it.

The female guard at the elevator noticed Caroline's tears, and smiled: "Uh-oh, someone got granted!"

Downstairs, we read the letter. It was a sunny day, and Caroline jumped up and down, clutching my arm and crying, "I am legal! I can be Caroline!"

She noticed that we were standing in a huge parking lot. "There are a lot of cars in this country."

A few months later, Caroline moved to a town in the Midwest, because she had a friend who had an apartment there, and she could live cheaply until she found a job. She now works for a company where her French-language skills come in handy. She is married to a white American man. She owns a car, and goes to church every Sunday. In her new life, she pays her taxes and has never taken a dime from the government. To many, she is a model American.

I keep thinking of the day Caroline moved from shadow to light. After she got the news that she'd been granted asylum, we celebrated at an anonymous-looking bar in an anonymous-looking office building near the asylum office. It was eleven o'clock in the morning, and we ordered a bottle of champagne. When the tab came, Caroline, for the first time since I'd known her, got it. She gave the waitress a credit card. The waitress came back and said, "It's not approved." I offered mine, but Caroline dug into her purse and brought out cash.

The champagne flowed fast. When we were nearly at the end of the bottle, Marie told us that in France it's said that "whoever drinks the last drop will get married this year."

I took the bottle and shook the last drop into Caroline's glass. "Where do you see yourself in ten years?" I asked her.

"I want to be *une femme accomplie*," Caroline said. An accomplished woman. "I can study. I can be an actress. I can go under my own name. Cecile?" She looked around the empty bar, feigning puzzlement. "Who is Cecile?"

"*C'est fini*," Marie said.

"*Ça commence*," Caroline replied. ♦

NEWYORKER.COM/GO/OUTLOUD
Suketu Mehta talks about immigration.

Material submitted by the Honorable Steve King, a Representative in Congress from the State of Iowa, and Member, Subcommittee on Immigration and Border Security

CENTER FOR IMMIGRATION STUDIES OCTOBER 2013

Deportation Numbers Unwrapped

Raw Statistics Reveal the Real Story of ICE Enforcement in Decline

By Jessica M. Vaughan

A key talking point for proponents of amnesty for illegal aliens is that the Obama administration has made historic improvements to border security and immigration enforcement, leading to "record" numbers of deportations that surpass the performance of earlier administrations. In December 2012, John Morton, then-director of U.S. Immigration and Customs Enforcement (ICE), announced that his agency had removed nearly 410,000 illegal aliens that year. Major news outlets, pro-amnesty lawmakers, and other Obama administration allies heralded this apparent milestone as evidence that the border and illegal immigration were now under control.

On the same day, to far less fanfare, Morton also announced the implementation of new restrictions on how the agents and officers working under him could use their authority to enforce immigration laws. They were told to curtail the use of detainers, or immigration holds, which give ICE officers the opportunity to question and take custody of illegal aliens identified after arrest by a local law enforcement agency. This directive built on an earlier memo, issued in June 2011, which ordered ICE agents not to arrest certain broad categories of illegal aliens, including minor criminals, long-time residents, students, parents, caregivers, and a long list of other excepted categories for whom there was otherwise no statutory basis for special treatment. These and other directives have been euphemistically characterized as "prosecutorial discretion."

This report examines data from a collection of mostly unpublished internal Department of Homeland Security (DHS) and ICE statistics, to provide an alternative evaluation of the administration's record on immigration enforcement that is based on raw statistics rather than pre-packaged press kits. These statistics show that, contrary to what is commonly believed, in fact immigration enforcement in the interior has slowed significantly in the last few years. ICE is arresting and removing noticeably fewer illegal aliens from the interior now than was the case five years ago, and even two years ago. Its focus has shifted away from interior enforcement in favor of processing aliens who are apprehended by the Border Patrol.

While the agency claims that it has stewarded resources effectively by guiding agents to hone in on criminals, in fact the number of criminal aliens removed from the interior also has declined, even as ICE's Enforcement and Removal Operations division (ERO) is notified of more arrested criminal aliens than ever before, through the Secure Communities program. These statistics stand in stark contrast to claims of "record deportations," which largely have been taken at face value by the news media and many lawmakers.

The report also presents previously unpublished statistics disclosing the startlingly large number of cases on ICE's post-final-order docket of aliens who have been ordered removed, but who remain living here in defiance of immigration enforcement. These "non-departed" illegal aliens are emblematic of the dysfunction in our immigration system, and must become a priority for enforcement before public trust in our system can be restored.

Jessica M. Vaughan is the Director of Policy Studies for the Center for Immigration Studies.

Key Findings

- The number of deportations resulting from interior enforcement by ICE declined by 19 percent from 2011 to 2012, and is on track to decline another 22 percent in 2013.
- In 2012, the year the Obama administration claimed to break enforcement records, more than one-half of removals attributed to ICE were the result of Border Patrol arrests that would never have been counted as a removal in prior years. In 2008, under the Bush administration, only one-third of removals were from Border Patrol arrests.
- Total deportations in 2011, the latest year for which complete numbers are available, numbered 715,495 - the lowest level since 1973. The highest number of deportations on record was in 2000, under the Clinton administration, when 1,864,343 aliens were deported.
- When claiming record levels of enforcement, the Obama administration appears to count only removals, which are just one form of deportation, and only a partial measure of enforcement. Beginning in 2011, a shift of some of the routine Border Patrol case load to ICE enabled the administration to count an artificially high number of removals.
- Homeland Security Investigations (HSI), the division of ICE that is responsible for work site enforcement, combating transnational gangs, overstay enforcement, anti-smuggling and trafficking activity, and busting document and identity theft rings, now contributes very little to immigration enforcement. In 2013 HSI has produced only four percent of ICE deportations, making just a few thousand arrests per year throughout the entire country.
- ICE is doing less enforcement with more resources. Despite reporting more encounters in 2013 than 2012, ICE agents pursued deportation of 20 percent fewer aliens this year than last.
- Enforcement activity declined in every ICE field office from 2011 to 2013, with the biggest declines in the Atlanta, Salt Lake City, Washington DC/Virginia, and Houston field offices.
- Criminal alien arrests declined by 11 percent from 2012 to 2013, despite the completion of the Secure Communities program, which generates more referrals of arrested aliens than ever before. ICE agents took a pass on hundreds of thousands of aliens who were arrested by local authorities in those years.
- ICE is carrying a case load of 1.8 million aliens who are either in removal proceedings or have already been ordered removed. Less than two percent are in detention, which is the only proven way to ensure departure.
- As of the end of July 2013 there were 872,000 aliens – nearly half of ICE's total docket – who had been ordered removed but who had not left the country.
- The State Department continues to issue tens of thousands of visas annually to citizens of countries that refuse to take back their countrymen who are ordered removed from the United States. Many of these are violent criminals.

The statistics in the tables and charts in this report are taken from internal DHS documents obtained by the Center, including:

- a series of reports prepared by the ICE/ERO Statistical Tracking Unit as part of the discovery process for *Crane v. Napolitano*, the lawsuit brought by ICE agents to challenge the Obama administration's "prosecutorial discretion" and Deferred Action for Childhood Arrivals (DACA) policies;
- two editions of the *Weekly Departures and Detention Report* covering the same 10-month period of fiscal years 2011-2013 (October 1 to the end of July), prepared by the Statistical Tracking Unit of the ICE Enforcement and Removals Operations division; and
- the *Yearbook of Immigration Statistics* published by DHS.

Total Deportations: Lowest Number Since 1973

Figure 1 shows the total number of expulsions from the United States from 1982 to 2011. This action is commonly known as a "deportation." In technical immigration law jargon, a deportation is actually just one form of expulsion that is a subset of removals, but for the purposes of this paper, the term deportation refers to all forms of expulsion.[1] They are grouped into two broad categories: removals and returns.

These enforcement actions were carried out by agents of the Customs and Border Protection (CBP) and ICE. They include aliens who were caught in the act of entering the country illegally and those who were arrested in the interior. These individuals were apprehended by or referred to agents of Border Patrol, ICE or other DHS component agencies, including ICE's Enforcement and Removal Operations (ERO); ICE, Homeland Security Investigations (HSI); CBP Office of Field Operation (CBP-OFO) agents at the ports of entry; officers of U.S. Citizenship and Immigration Services (USCIS), which adjudicates applications for green cards, work permits, and citizenship; or local law enforcement officers working in partnership with ICE and Border Patrol.

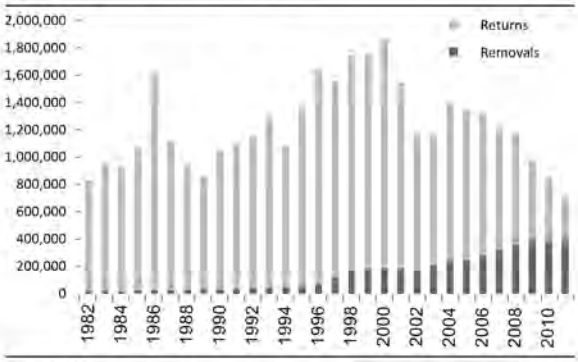
Deportation totals have fluctuated over the last 30 years, peaking in 1986, 2000, and 2004. The all-time record year was 2000, the last year of the Clinton administration. In 2011, the most recent year for which all ICE and CBP totals have been reported, deportations numbered 715,495. This was the lowest year since 1973, when 585,351 deportations were effected.

Figure 1 also shows that the proportion of removals relative to returns has increased significantly since 1997. A removal is a harsher consequence than return, because it bars the deportee from re-entry for a certain number of years and carries the potential for prison time if the deportee re-enters illegally. Aliens who are granted return are not automatically barred from coming back.

Both forms of deportation are used by both the Border Patrol and ICE. As is shown in Table 3 below, about half of the removal cases attributed to ICE are aliens who were apprehended by the Border Patrol and then turned over to ICE for processing. In addition, the Border Patrol and CBP officers handle some removal cases independently of ICE. As for returns, according to the Border Patrol statistics in Table 1, about 40 percent of returns in 2011 were cases that originated as Border Patrol apprehensions, with the other 60 percent completed by ICE and CBP.

To support the claim of "record" deportations in 2012, the Obama administration and its supporters cite the 409,000

Figure 1. Deportations: 1982 - 2011



Source: DHS

removals attributed to ICE that year. This is the highest number of removals credited to ICE in a single year; however, the number is higher because it includes the largest number of Border Patrol cases that ever have been transferred to ICE for processing in a single year (see Table 3). It does not reflect an increase in enforcement activity. In past years, these cases would have been handled by the Border Patrol, and counted in total deportations, but not as removals. Removals are at best half the number of total deportations, and do not represent the entire scope of enforcement actions taken by DHS enforcement agencies.

The President himself confirmed this statistical manipulation in 2011, speaking at a roundtable for Hispanic reporters:

> *"The statistics are actually a little deceptive because what we've been doing is, with the stronger border enforcement, we've been apprehending folks at the borders and sending them back. That is counted as a deportation, even though they may have only been held for a day or 48 hours, sent back — that's counted as a deportation," he said.*[2]

Border Patrol Metrics: More Consequences for Fewer Cases

Table 1 shows the case disposition, or outcome, for each alien apprehended by the Border Patrol in 2012. Two-thirds of the aliens caught that year were processed as a formal removal – either expedited removal or the reinstatement of a prior order of removal. About one-fifth were granted the more lenient treatment of voluntary return. As shown in Table 2 and the accompanying Figure 2, 2012 (the year of "record" deportations) was the first year ever in which a majority of Border Patrol apprehensions resulted in the formal removal of the alien, as opposed to voluntary return. Historically, the vast majority of aliens apprehended by the Border Patrol were allowed to return rather than face removal. Programs that were set up in 2011 to process more border apprehension cases as formal removals were implemented with the stated purpose of deterring repeated crossing attempts, but had the side benefit of boosting ICE's removal statistics.[3]

The other significant trend in the Border Patrol case dispositions is that the number of reinstatements of prior removal orders has increased noticeably over the decade, both in absolute numbers and as a share of the total case load. These are cases of individuals who have been caught and removed on multiple occasions. Once a tiny share of the Border Patrol case load, now about one-fourth of those arrested at the border are processed as reinstatements. This could indicate that the rewards of illegal entry still are believed to outweigh the risk of apprehension, or the consequences of apprehension.

Reinstatements are a significant share of ICE's interior case dispositions as well. In 2012, more than 40,000 of the removals that resulted from an interior arrest were processed as reinstatements, representing about 24 percent of the interior removal case load.[4] Clearly, a large number of previously deported aliens have managed to re-enter illegally and carry on for some time before detection, typically after arrest for another crime or traffic offense.

Table 1. Border Patrol Apprehensions by Disposition: 2012

Outcome	Number	%
Expedited Removal	145,245	40
Reinstatement of Prior Removal Order	99,420	27
Voluntary Return	80,516	22
Warrant of Arrest/Notice to Appear	28,339	8
Expedited Removal with Credible Fear	4,065	1
Other	7,183	2
Total	364,768	100

Source: Border Patrol

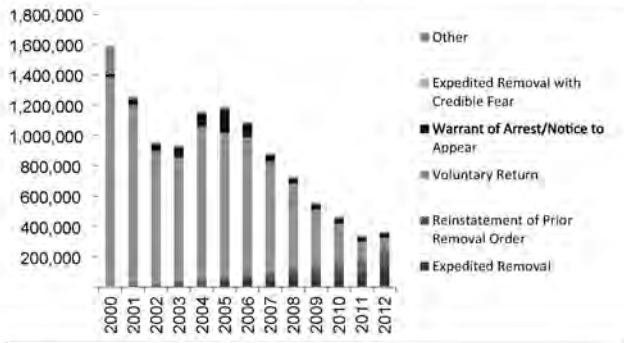
Table 2. Border Patrol Apprehensions by Disposition: 2000-2012

Outcome	2000	2001	2002	2003	2004	2005	2006
Expedited Removal	9	24	12	19	633	35,936	57,116
Reinstatement of Prior Removal Order	7,389	12,626	17,673	33,551	47,649	23,434	25,017
Voluntary Return	1,378,133	1,187,941	879,302	824,098	1,012,516	956,471	908,626
Warrant of Arrest/Notice to Appear	19,497	35,639	41,879	59,219	83,094	153,309	85,074
Expedited Removal with Credible Fear				1	57	634	1,489
Other	185,665	19,863	14,880	15,055	16,379	19,178	11,786
Total	1,590,693	1,256,096	953,746	931,923	1,160,328	1,188,962	1,089,108

Outcome	2007	2008	2009	2010	2011	2012
Expedited Removal	57,950	75,646	71,257	78,133	90,499	145,245
Reinstatement of Prior Removal Order	34,063	39,648	70,325	73,700	75,404	99,420
Voluntary Return	736,138	567,000	371,509	268,142	134,108	80,516
Warrant of Arrest/Notice to Appear	38,958	32,846	30,687	30,157	28,291	28,339
Expedited Removal with Credible Fear	1,711	1,470	1,973	2,828	3,701	4,065
Other	7,929	7,255	10,207	10,422	8,249	7,183
Total	876,749	723,865	555,958	463,382	340,252	364,768

Source: Border Patrol

Figure 2. Border Patrol Apprehensions by Disposition: 2000-2012



Source: Border Patrol

Interior Enforcement Metrics: Doing Less with More

Americans understand that immigration enforcement in the interior is vital to the rule of law, preventing illegal employment, public safety, and national security. Experts estimate that about 60 percent of the approximately 11.7 illegal aliens who are residing here originally entered the country by illegally crossing a land border, and about 40 percent were admitted through an official port of entry and overstayed their visa or authorized admission. Most illegal aliens do not live in the border region; they are dispersed throughout the nation. Besides the seven million or so aliens who are working illegally, there are more than one million removable criminal aliens who are at large in U.S. communities as a result of release from jail or prison, or after having re-entered illegally after deportation.[5]

To address this problem, Congress has provided ICE with increased funding to enforce immigration laws and remove illegal aliens. In 2008, ICE received $5.6 billion and 17,938 full-time equivalent (FTE) positions. This grew to $5.9 billion and 20,271 FTE positions in 2012 – a growth rate of five percent in funding and 13 percent in staff.[6] With additional funding, ICE has been able to launch new technology-based initiatives such as the Secure Communities program, which has dramatically increased its ability to locate illegal aliens who have been arrested and/or booked into jail by local officers for local crimes.

The resource and programmatic enhancements did contribute to increases in interior enforcement from 2008 to 2010, but this activity has declined considerably since 2010. As shown in Table 3 and Figure 3, the number of deportations that resulted from interior enforcement by the two primary agencies of ICE (ERO and HSI) declined by 19 percent from 2011 to 2012, and are projected to fall another 22 percent in 2013.

Table 3 also confirms President Obama's statement that the primary driver of the removal numbers is Border Patrol arrests, not interior enforcement. In 2012, more than half (52%) of deportations were the result of a Border Patrol arrest. In 2008, only 33 percent of deportations were the result of a Border Patrol arrest; at that time most illegal border crossing cases were processed by the Border Patrol rather than transferred to ICE.

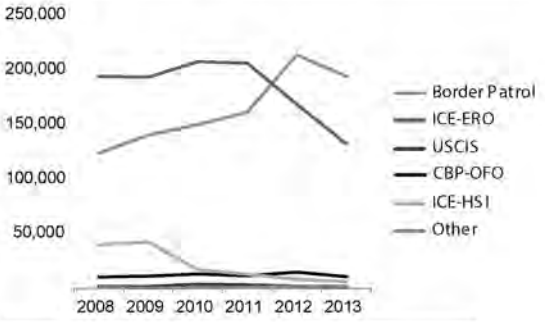
These statistics also reveal that under the Obama administration, the resources of HSI, which is the division of ICE that is responsible for work site enforcement, combating transnational gangs, overstay enforcement, anti-smuggling and trafficking activities, and busting document and identity theft rings, have been diverted to other activities. As a result HSI now makes only a negligible contribution to immigration enforcement. In 2008, HSI arrests produced 17 percent of ICE-initiated deportations; in 2013 they are projected to produce only four percent of ICE-initiated deportations.

Table 3. Removals by Program: 2008-2013

Program	2008	2009	2010	2011	2012	2013 projected
Total	371,235	389,834	392,862	396,906	409,849	347,102
Border Patrol	123,985	140,473	150,240	161,454	213,834	194,407
CBP-OFO	10,466	11,420	13,387	11,697	15,005	10,948
USCIS	1,935	1,929	4,008	3,438	2,207	1,191
ICE-ERO	194,234	193,465	207,680	206,314	168,613	132,546
ICE-HSI	39,223	41,494	16,417	12,287	7,584	5,441
Other	1,392	1,053	1,130	1,716	2,566	2,570

Source: ICE

Figure 3. Removals by Program: 2008-2013



Source: ICE.

ICE Metrics Under "Prosecutorial Discretion"

Table 4 presents some of the key metrics for interior immigration enforcement, which come from internal ICE reports that cover the first 10 months of fiscal years 2012 and 2013 (October 1 to the end of July) – the same time period for each year.

These figures provide a more detailed accounting of the drop-off in enforcement activity by ICE/ERO, the division of ICE that is the primary source of interior enforcement. In addition to processing cases referred by other agencies, ERO is responsible for screening aliens who are in jail or prison after committing local crimes, aliens arrested for local offenses such as drunk driving or other traffic offenses, and aliens who have absconded from immigration proceedings. These activities represent the vast majority of current interior enforcement activity.

The first indicator, departures, is the equivalent of deportations (removals plus returns). As of July 2013, ICE had deported nine percent fewer aliens than at the same point in 2012. As discussed above, about half of these deportation cases are aliens apprehended by the Border Patrol.

Departures of criminals have remained nearly constant, but "non-criminal" removals dropped by about 15 percent. In ICE nomenclature, the term "criminal alien" applies to aliens who have been convicted of a felony or misdemeanor. "Non-criminals" includes those with lesser offenses such as traffic infractions, those who admitted to crimes but were not sentenced to jail, those who were not prosecuted, repeat immigration violators, those who skipped out on immigration hearings, those who ignored orders to depart, and a small number of individuals who merely were found to be here illegally or who violated the terms of their legal admission by working or overstaying.

According to the metrics that measure ICE/ERO activity – Encounters, Detainers, Arrests, and Charging Documents Issued[7] – interior enforcement has declined to a greater degree than indicated by the Departures metric alone. Even though ICE agents had encountered slightly more aliens at this point in 2013 than in 2012, they pursued deportation of about 20 percent fewer of them compared to the year before.

These metrics again confirm that the recent increase in the number of ICE removals is driven by the increase in Book-Ins

from other agencies – namely the Border Patrol – and not by an increase in ICE arrests. In each of the two partial years, the number of Book-Ins (to ICE custody) reported is much larger than the number of detainers, arrests, or charging documents issued by ICE itself. According to these records, ICE took custody of more than 200,000 aliens who were apprehended by another agency (the Border Patrol).

These statistics reveal that ICE pursues deportation for only a fraction of the illegal aliens encountered by its agents. In the period of 2012 studied, ICE issued charging documents for 35 percent of the aliens that were encountered. In the same period in 2013, ICE pursued deportation of 27 percent of the aliens encountered. In other words, over the last two years, ICE has allowed about two-thirds of the aliens encountered or referred to its agents to go free and escape deportation. Considering that these encounters are mostly the result of referrals from local jails and police departments, or due to fingerprint matches after arrest, this should be a serious public safety concern to federal and local lawmakers alike, as well as the public. The restrictions imposed on ICE agents as a result of prosecutorial discretion mandates are allowing literally hundreds of thousands of illegal alien offenders to return to U.S. communities each year in defiance of our laws.

Table 4. Comparison of ICE/ERO Metrics: Oct.-July, FY2012 and FY2013

Metric	2012	2013	Change
Total Departures	334,249	305,578	-9%
Criminal Departures	174,858	169,385	-3%
Non-Criminal Departures	159,391	136,193	-15%
Total Docket	1,705,332	1,802,660	6%
Pending Final Order	848,416	930,511	10%
Post Final Order	856,916	872,149	2%
Avg. Daily Population Detained	33,839	33,978	0%
Avg. Length of Stay (in days)	26	29	8%
Encounters	591,613	597,005	1%
Detainers	236,087	176,901	-25%
Arrests	221,656	176,194	-21%
Charging Documents Issued	208,728	162,610	-22%
Book-Ins (includes cases from other agencies)	395,824	368,174	-7%

Source: ICE

Enforcement Activity Declined in Every ICE Field Office

Table 5 shows the steep decline in the number of aliens selected by ICE for deportation in each Field Office from 2011 to 2013. The figures show the number of charging documents issued in the first 10 months of each fiscal year (October to July).[8]

Overall, ICE/ERO initiated deportation for 34 percent fewer aliens in 2013 than the same period in 2011.

The Field Offices that saw the largest declines in the number of aliens put on the path to removal were Atlanta, Salt Lake City, Washington DC/Virginia, and Houston. The smallest declines were in the San Antonio and New York City Field Offices. No Field Office increased the number of aliens charged, even though the Secure Communities program was expanded in most of these jurisdictions over the three-year time period.

Table 5. Charging Documents Issued by ICE Field Office: Oct.-July FY2011, 2012 and 2013

	2011	2012	2013	% Change
Total	226,411	208,281	149,475	-34%
Atlanta	19,307	17,539	7,293	-62%
Baltimore	1,944	1,859	1,328	-32%
Boston	3,063	3,415	2,525	-18%
Buffalo	1,279	1,151	1,086	-15%
Chicago	14,064	11,244	8,402	-40%
Dallas	13,703	11,701	9,552	-30%
Denver	5,692	4,718	3,447	-39%
Detroit	5,071	4,642	3,452	-32%
El Paso	4,540	4,460	2,927	-36%
Houston	13,384	12,148	7,680	-43%
Los Angeles	23,319	21,398	14,379	-38%
Miami	10,494	11,144	7,933	-24%
New Orleans	10,630	9,595	6,696	-37%
New York City	6,910	6,379	6,594	-5%
Newark	3,996	3,849	3,022	-24%
Philadelphia	4,464	3,893	3,470	-22%
Phoenix	11,686	10,456	7,854	-33%
Salt Lake City	6,019	5,086	3,097	-49%
San Antonio	11,197	13,177	10,745	-4%
San Diego	10,435	9,038	6,213	-40%
San Francisco	22,239	19,348	14,459	-35%
Seattle	6,873	5,985	4,775	-31%
St. Paul	5,714	5,032	3,816	-33%
Washington, DC	6,306	5,652	3,424	-46%
Other	4,082	5,372	5,306	30%

Source: ICE

Prosecutorial Discretion Results in Fewer Criminal Alien Arrests

The Obama administration has rationalized its policy of "prosecutorial discretion" and amnesty for certain groups of illegal aliens as necessary to maintain a focus on deporting criminal aliens and those who pose a threat to public safety. Yet the total number of criminal alien arrests also declined by 11 percent from 2012 to 2013, as shown in Table 6, which covers activity for the first 10 months of 2012 and 2013.

The biggest declines in criminal alien arrests occurred in the San Diego, Washington DC/Virginia, Miami, and El Paso field offices. Only three field offices increased criminal alien arrests: Dallas, Philadelphia, and Phoenix.[9]

Table 6. Convicted Criminal Arrests by Field Office: Oct.-July FY2012 and FY2013

	2012	2013	% Change
Total	143,598	128,141	-11%
Atlanta	8,944	7,874	-12%
Baltimore	1,308	1,150	-12%
Boston	2,384	1,914	-20%
Buffalo	992	968	-2%
Chicago	7,614	6,958	-9%
Dallas	10,272	11,026	7%
Denver	4,039	3,462	-14%
Detroit	4,090	3,283	-20%
El Paso	2,181	1,720	-21%
Houston	8,454	7,043	-17%
Los Angeles	13,771	12,500	-9%
Miami	6,962	5,466	-21%
New Orleans	5,711	5,133	-10%
New York City	3,631	3,110	-14%
Newark	2,008	1,655	-18%
Philadelphia	2,708	2,963	9%
Phoenix	4,262	5,044	18%
Salt Lake City	4,144	4,128	0%
San Antonio	17,387	17,332	0%
San Diego	4,972	3,062	-38%
San Francisco	14,830	12,230	-18%
Seattle	4,379	3,769	-14%
St. Paul	3,898	3,444	-12%
Washington, DC	3,822	2,852	-25%
Other	835	375	-55%

Source: ICE

Secure Communities Increases Criminal Alien Referrals

Some defenders of the administration's lackluster enforcement record have suggested that the lower ICE interior deportation numbers are the result of better enforcement at the southwest border taking the pressure off of ICE in the interior, plus the implementation of the Deferred Action for Childhood Arrivals amnesty (known as DACA). This explanation is unconvincing. First of all, the Border Patrol reported an increase in apprehensions in 2012, which is generally taken as an indication that illegal crossing attempts (and successful illegal crossings) have increased. A recent study by the Pew Hispanic Center seemed to corroborate the start of a new upward trend in illegal immigration, estimating that the size of the settled illegal alien population is back on the rise.[10] Moreover, even if new illegal arrivals had slackened, the population of established illegal residents is still large enough to keep ICE very busy – even if it focused only on the estimated 1.9 million criminal aliens living in the United States.

Moreover, in 2012 ICE completed the implementation of the Secure Communities program, which alerts ICE whenever a non-citizen is arrested and fingerprinted by a law enforcement agency. As shown in Table 7, this initiative generated more than 400,000 referrals of arrested aliens to ICE in 2012. This does not include the large number of criminal aliens who do not have fingerprints on file with DHS who also are discovered by local law enforcement or ICE officers working in jails. With the help of this program, ICE's interior criminal alien removal numbers should be increasing, not decreasing, especially considering that illegal alien criminals can be removed expeditiously if ICE personnel are encouraged and trained to do so properly.

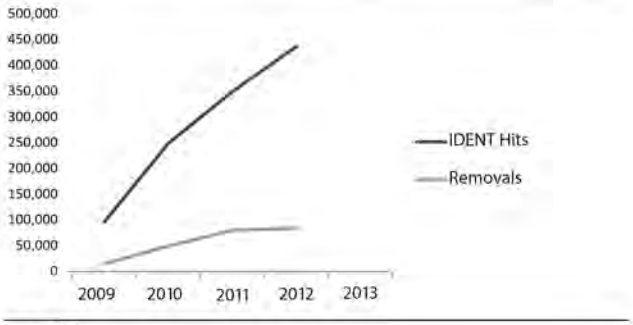
Yet program data published by ICE indicate that removals generated by Secure Communities are also declining, and are projected to be 17 percent lower in 2013 compared with 2012, even though the number of aliens identified is larger than ever.

Table 7. Arrested Aliens Identified via Secure Communities: 2009-2013

	2009	2010	2011	2012	2013* Partial	2013 Projected
IDENT Hits	95,664	248,166	348,970	436,377	344,499	459,332
Jurisdictions Added	88	570	937	1,479	306	
Removals	14,364	49,511	79,900	85,815	51,892	69,189**
Removal/Hit Rate	15%	20%	23%	19%	15%	

*as of May 31, 2013
** projected decrease of 17%
Source: ICE

Figure 4. Arrested Aliens Identified via Secure Communities: 2009-2013



Source: ICE

Few Dreamers Needed Deferred Action

Some have claimed that the decline in enforcement is to be expected following the implementation of the DACA program. According to former DHS Secretary Janet Napolitano, the program was needed in order to spare hundreds of thousands of long-resident illegal aliens from the threat of deportation, and free up ICE agents to work higher priority cases of criminals and national security threats.

The statistics do not support this claim. Relatively few DACA-eligible illegal aliens actually were facing the threat of deportation. According to ICE records released for *Crane v. Napolitano*, as of March 30, 2013, more than seven months after the launch of the program, there were 4,594 active cases of illegal aliens on ICE's docket who were granted deferred action under DACA. These are much too small a share of the case load to have suppressed enforcement to the degree that has occurred. And, as discussed above, the number of criminal removals has declined,not increased, after DACA.

Clearly, the DACA program was neither needed nor intended to save low-risk illegal aliens from deportation, nor to allow ICE to focus on higher priority cases. The obvious purpose of DACA was to provide work permits and legal presence to hundreds of thousands of long-resident illegal aliens under age 31. DACA has had no noticeable effect on ICE's workload; instead, it has contributed to the "catch and release" nature of immigration enforcement today.[11]

ICE's Docket: The Non-Departed

Table 8 is a snapshot of ICE's case load at the end of July in 2012 and 2013. This table illustrates the enormity of the immigration enforcement case load – more than 1.8 million cases in 2013.

Of these 1.8 million aliens on the path to deportation in 2013, fewer than 30,000 were in detention at any one time, or about 1.7 percent. Those detained the aliens on ICE's docket who are most likely to actually depart the country.

Just over half of ICE's daunting docket of cases is made up of individuals who are in proceedings and have not yet been ordered removed (or granted relief). The other half is made up of people who have already been ordered removed – but who are still here. A tiny share (1.5%) of these post-final-order cases are in detention; while awaiting travel documents or acceptance by their home country, but most of them will ultimately be removed.

Table 8. ICE Docket:
End of July 2012 and 2013

	2012	2013
Pending Final Order		
Detained	21,499	16,528
Non-Detained	826,917	913,983
Total	848,416	930,511
Post Final Order		
Detained	14,771	13,370
Non-Detained	842,145	858,779
Total	856,916	872,149
TOTAL DOCKET	1,705,332	1,802,660
% Detained	2.1	1.7

Source: ICE

The group that should be of greatest concern for policy makers is the enormous number of non-detained, post-final-order cases. These are aliens who have been accorded due process, exhausted appeals, and received a final order of removal, but who remain here in defiance of that order. As of the end of July 2013, there were 872,000 individuals on ICE's docket in this category. A relatively small share cannot be removed, either because their home country won't take them back, or because the government there is insufficiently organized to issue travel documents (see below). The vast majority of the 872,000 have simply absconded, skipped out on hearings, and continue to live here as illegal aliens. This number grew by more than 15,000 from 2012 to 2013.

The Impact of Zadvydas v. Davis

Some aliens cannot be removed, or their removal takes a very long time, either because of limitations in bilateral repatriation treaties (as is the case with Cambodia), or because the home country refuses to issue or deliberately slow-walks travel documents for the alien (Cuba and Bangladesh), or because the home country government is dysfunctional (Somalia). In 2001, the Supreme Court ruled in *Zadvydas v. Davis* that such aliens may not be detained for more than six months if their removal is not imminent, except in certain uncommon circumstances.[12]

Because of the *Zadvydas* restrictions, and because DHS and the State Department have declined to follow a statutory mandate to put pressure on recalcitrant countries to take back their citizens, ICE has released more than 17,000 essentially un-removable aliens from detention since 2010 (See Table 9). Most of these aliens are convicted criminals. There is also an unknown number of non-criminal and/or non-detained removable aliens on the docket whose departure is prevented by their home country's recalcitrance or dysfunction. Some additional unknown number of aliens from these countries are treated as exempt from enforcement under the guidance in the Morton Memo of 2011, and thus simply are not arrested by ICE agents who encounter them.

Meanwhile, the State Department continues to issue and renew tens of thousands of visas for citizens of these countries (See Table 10). For example, in 2012 it took an average of 436 days for the government of Malaysia to issue travel documents to its citizens who were ordered removed from the United States. If any of those aliens were detained, at $120 per day those 436 days of waiting for travel documents cost U.S. taxpayers more than $52,000 per detained Malaysian. In 2012, the State Department issued 47,000 temporary visas to Malaysians, approving 95 percent of all applicants. Even if an unusually high number complied with their visas and returned home, and just three percent overstayed, that would add another 1,400 illegal aliens to the population who are very difficult to remove, even if they commit crimes. This could be why ICE succeeded in deporting only 31 Malaysians in 2012.[13]

Table 9. Removable Aliens Released Due to Zadvydas: 2010-Present

Year	
2010	4,946
2011	4,695
2012	5,346
2013 (thru March)	2,311
Total	17,298

May include multiple releases for a single alien.
Does not include removable aliens not in detention who cannot be removed.
Source: ICE.

Table 10. Worst Countries for Travel Document Issuance

	Average Days to Issue Travel Documents 2010-2012		Average Days to Issue Travel Documents in 2012	Non-Immigrant Visas Issued in 2012	Visitor Visa Approval Rate
Qatar	800	Cambodia	558	3,663	66%
Cambodia	522	Iran	545	25,046	62%
St. Kitts & Nevis	410	Iraq	487	10,399	67%
Kuwait	376	Bangladesh	476	15,911	74%
Vietnam	368	St. Kitts & Nevis	467	1,390	73%
Turkmenistan	354	Malaysia	436	17,027	95%
The Gambia	350	Ivory Coast	417	4,622	72%
Sudan	339	Liberia	405	3,168	54%
Somalia	331	Niger	340	1,200	64%
Djibouti	328	Vietnam	315	58,117	78%
Burma	324	Yemen	308	3,497	52%
Iran	303	Burkina Faso	303	2,588	65%
Liberia	295	Haiti	293	29,213	46%
Iraq	269	Djibouti	286	538	35%
Niger	253	Belarus	283	11,018	80%
Yemen	252	Dem. Rep. of Congo	274	5,320	63%
Haiti	245	Somalia	273	202	38%
Sierra Leone	241	Sierra Leone	253	1,807	50%
Burkina Faso	234	Algeria	249	7,364	76%
Ivory Coast	229	Montenegro	244	3,699	69%
Zimbabwe	222	Cuba	241	20,200	61%
Lebanon	202	Kosovo	238	4,328	68%

Source: ICE and the State Department

Traffic Offenders

Since the implementation of Secure Communities, advocates who are opposed to immigration enforcement have alleged that the program has served as an unfair and overzealous dragnet that results in the deportation of harmless people who have been turned over to ICE as a result of "minor" traffic offenses, such as a broken taillight. Advocates often imply or contend that such traffic stops were baseless, illegitimate, or trumped up in discriminatory practices by local police and sheriffs.

These claims are not supported by ICE records, which are summarized in Table 11.[14] In each of the last three years (2011 through 2013), about 14 percent of all aliens deported were identified due to a conviction for a traffic offense, as opposed to a misdemeanor or felony, and numbered between 40,000 and 60,000 in each of those years.

The records show that the majority of traffic offenses committed by these removed aliens were far from minor. Sixty-four percent of the aliens deported after traffic offenses were convicted of driving under the influence of alcohol or drugs. Thousands of others were convicted of hit and run.

It would be a mistake to assume that the nearly 60,000 individuals who were deported in the last four years after being convicted of mere unspecified traffic offenses were somehow unfairly or inappropriately targeted by ICE. All had immigration violations as well and it is possible, even likely, that most of these offenders had either been deported before or had skipped out on hearings.

Table 11. Traffic Offenders Removed: 2010-2013

Most Serious Conviction	2010	2011	2012	2013 (Oct-March)	Total	Percent
Hit & Run	992	1,334	1,312	479	4,117	2%
Transporting Dangerous Material	3	6	5	3	17	<1%
DUI - Drugs	681	684	733	342	2,440	1%
DUI - Alcohol	27,635	35,927	36,166	14,246	113,974	63%
Other Traffic Offense	13,028	19,041	20,044	7,487	59,600	33%
Total	**42,339**	**56,992**	**58,260**	**22,557**	**180,148**	**100%**

Source: ICE

Conclusion

The Obama administration has sought to portray its performance on immigration enforcement as smarter, better, and more successful than previous administrations. To support this claim, it has presented a few statistical nuggets in clever packaging that have been artificially padded by transferring cases from the Border Patrol to ICE. To use the proverbial "apples and oranges" analogy, the Obama administration, in order to give the impression of a "record" apple harvest, has counted both apples (ICE cases) and oranges painted to look like apples (Border Patrol cases), while leaving a large number of actual apples on the trees.

A better picture of the true state of immigration enforcement in the interior, where most illegal aliens have settled and where most Americans notice the impact, emerges from this analysis of ICE's internal statistics and metrics. Interior enforcement activity, including arrests and removals of criminal aliens, which are ICE's highest priority, has declined significantly. More than 870,000 aliens who have been ordered removed are still living here in defiance of our laws. This dysfunction must be addressed before consideration of more mass amnesties or expansions in admissions of any kind. Until we achieve better control of illegal immigration, and the laws we have are taken seriously and enforced, there is no point in passing new ones.

End Notes

[1] For definitions and details on the immigration enforcement process, see *Deportation Basics*, by W.D. Reasoner: http://www.cis.org/deportation-basics.

[2] http://www.washingtontimes.com/news/2011/oct/5/napolitano-us-will-set-record-deportations-2011/#ixzz2i7xLpOIQ

[3] One of these programs was the Alien Transfer Exit Program (see http://articles.latimes.com/2011/sep/29/local/la-me-immigrant-deport-20110930).

[4] Internal ICE statistics obtained for *Crane v. Napolitano*.

[5] ICE statistics cited in http://www.cis.org/vaughan/secure-communities-please.

[6] DHS Budgets in Brief, 2009 and 2013.

[7] Encounters occur when an alien comes into contact with an ICE officer in an official setting, such as in a jail or street operation, or when an ICE agent is notified about an inmate in local custody, such as through a query to the ICE Law Enforcement Support Center.

[8] Figures do not include cases generated by the 287(g) programs operating in these districts.

[9] The increase in criminal arrests in Phoenix may be due to the cancellation of several 287(g) programs in Arizona. These programs formerly handled a significant share of ICE's criminal work load before their cancellation in 2012, and following the termination of the programs, the workload shifted back to ICE. See http://www.cis.org/vaughan/stopping-immigration-enforcement.

[10] http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/.

[11] See http://www.cis.org/vaughan/lawsuit-documents-criminal-alien-releases-decline-enforcement-cooked-statistics.

[12] See http://www.cis.org/stopping-release-of-criminal-aliens for more details.

[13] Interestingly, since 2004, Malaysia has been trying to crack down on its own illegal immigration problem. Illegal aliens there reportedly are subject to harsh treatment, including large fines and caning. Amnesty International claims that 10,000 people have been caned in Malaysia for immigration violations.

[14] The source of these figures is the set of ICE reports released under discovery in *Crane v. Napolitano*.

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security

Statement of

Cristina Jimenez, Managing Director
and
Jerssay Arredondo, Queer Undocumented Immigrant Project Coordinator

United We Dream Network

House Judiciary Committee

Hearing on "Asylum Fraud: Abusing America's Compassion?"

February 11th, 2014

Recently, Members of Congress have alleged that the U.S. asylum process, which was created to comply with international obligations regarding the human rights of refugees, is ripe with abuse. As a network of organizations representing LGBT immigrants and asylum seekers across the country, United We Dream (UWD) appreciates the opportunity to provide testimony for today's hearing. We offer this statement in recognition of the need to both protect and improve the existing process for LGBT asylum seekers to ensure that LGBT immigrants are not deported and returned to the persecution from which they fled.

United We Dream is the largest national network of youth-led immigrant organizations in the country, with 52 affiliates in 25 states. We aim to address the inequities and obstacles faced by immigrant youth and to develop a sustainable, grassroots movement, led by undocumented immigrant youth—Dreamers—and their allies. The Queer Undocumented Immigrant Project (QUIP) of United We Dream organizes queer undocumented youth leaders to advance their own rights and fight for the liberation and equal treatment of the "undocuqueer" community.

Ensuring Access to Asylum for LGBT Immigrants

Many LGBT immigrants come to this country seeking freedom from violence, persecution, abuse and torture simply because of who they are or whom they love. UWD believes that the asylum process must enable these individuals to make out an effective claim for asylum and protect individuals who seek to do so. However, the existing asylum process currently dissuades and, in some cases, bars LGBT applicants from doing so.

When an LGBT asylum seeker is apprehended at or near a port of entry and does not have valid entry documents, he or she is typically placed into expedited removal proceedings without opportunity to have a hearing before an immigration judge. The Credible Fear Interview (CFI) is a first step to determine whether an LGBT asylum

seeker will be permitted to submit a formal application for asylum. It requires asylum seekers to show that there is a "significant possibility" that he or she will be able to demonstrate past persecution or a well-founded fear of persecution in making their asylum claim. Far from guaranteeing a grant of asylum, the CFI interview is merely a way to screen out some individuals and deny them the opportunity to apply for asylum. Although some members of Congress have suggested that the CFI process is not robust enough, the undersigned organizations believe that all individuals that wish to do so including LGBT immigrants, should be granted the opportunity to formally apply for asylum. Short of that, the CFI process must be as flexible as possible, so as to ensure that no individuals with valid claims are barred from even the possibility of applying for asylum. Attorneys continue to report that asylum seekers are subjected to expedited removal and deported despite their legitimate claims.

In addition, the UWD believes that asylum law should be reformed to eliminate the requirement that asylum seekers apply for asylum within a year of arriving in the United States. Many LGBT immigrants are unaware that they are eligible for asylum when they arrive in the United States, and others have been hiding their sexual orientation or gender identity from government authorities their entire lives. Therefore, it is unreasonable and unjust to deny asylum to LGBT immigrants based on an arbitrary deadline.

Ending Inhumane Detention for LGBT Immigrants

Members of Congress have expressed concern that the CFI process is being abused as a mechanism for immigrants to escape detention and be released into the United States. Individuals who are found to have a credible fear of persecution based on their interview may be eligible for parole pursuant to a 2009 ICE policy directive, at ICE's unreviewable discretion.[1] Often, ICE officials continue to detain individuals despite the fact that they have passed a credible fear interview and are applying for asylum, often as a result of arbitrary detention quotas that encourage incarceration.

Immigration detention is likely to be an especially treacherous place for LGBT detainees, who frequently face harassment and mistreatment while in ICE custody. For example, according to a recent ACLU report, Tanya, a transgender woman who was detained by ICE at the Eloy Detention Center in Arizona, experienced multiple incidents of extreme harassment. She received threats from a male detainee who tried to force her to engage in oral sex and harassment by detention officers for wearing her hair in a ponytail or cuffing her pant legs. After reporting the abuse, she was isolated for approximately six weeks. Although recent policy changes regarding solitary confinement have improved conditions for LGBT immigrants somewhat, immigration detention remains a dangerous and risky place for many in our communities.

United We Dream urges Congress to consider reforms that would minimize the use of detention. Rather than forcing individuals who have passed their credible fear interview

[1] U.S. Immigration and Customs Enforcement (ICE), "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," Directive No. 11002.1, effective Jan. 4, 2010, http://www.ice.gov/doclib/dro/pdf/11002.1-hd parole_of_arriving_aliens_found_credible_fear.pdf.

to remain detained, we believe that Congress must eliminate arbitrary detention quotas, expand alternatives to detention and further protect LGBT asylum seekers by expanding access to government-appointed counsel while in detention.

We are grateful for the opportunity to provide these comments. We look forward to working with Members of Congress from both parties to make much-needed improvements to our immigration system.

Sincerely,

Cristina Jimenez
Jerssay Arrendondo

Prepared Statement of Michael Comfort, President, Comfort Western Enterprises LLC

February 14, 2014

Subcommittee on Immigration and Border Security
House Judiciary Committee
United States House of Representatives

Attention: Congressman Trey Gowdy, Subcommittee Chairman

Honorable Congressman Gowdy,

My name is Michael Comfort. Thank you for this opportunity to provide my observations and recommendations regarding asylum fraud and its nexus with our national security.

I retired from Citizenship and Immigration Services in January 2006, after serving as Chicago's district director and before that I served as the agency's interim district director in Denver. At the time of INS' split in March 2003, I was the acting district director in Denver. My experience in INS spanned both the enforcement and services missions. In particular and germane to these proceedings, I served as the incident commander in south Florida during the Cuban mass migration in 1994, interviewed individuals and adjudicated their applications for asylum, interviewed and processed refugees in camps in southeast Asia, participated in the Haitian Maritime Interdiction Operations program, and trained to interview and process Jewish refugees in the Soviet Union.

The American people have a long and proud history of providing sanctuary to those who experience persecution in their native countries. That generosity comes with the expectation that their government will ensure integrity in the asylum and refugee processes, thereby protecting our national security and welfare. Asylum and refugee cases present challenges not generally associated with other benefits under the Immigration and Nationality Act. This discussion includes both asylees and refugees since the distinction between their cases is the geographic location of the applicant. Asylum applicants are those who have reached our border or are already inside the United States while refugees are those who apply abroad.

Those suffering from persecution cannot easily, if at all, secure legitimate government identity documents issued in their native countries. Many times these individuals use counterfeit or fraudulent documentation to exit their native countries and travel to a place of refuge. Further, corroboration of an individual's personal experience is not always available from traditional information sources (newspapers and other public accounts). Therefore decisions to grant asylum or refugee status often hinge primarily on the testimony of the applicant and at best tertiary evidence.

These conditions open the door for terrorists, war criminals, other criminals, and those seeking economic gain to engage in the use of fraud and willful misrepresentation to gain this generous benefit under the Immigration and Nationality Act. Furthermore, the Obama Administration's extremely lenient detention and removal policies, particularly in these cases, encourage otherwise ineligible aliens to apply for asylum because the risk of being forced to leave this country are minimal. Now the Department of State has promulgated a regulation that expands the definition of those qualified for this status to include those individuals who have participated in limited support of terrorist organizations. Our government cannot be allowed to expose its people to the dangers these individuals pose to our well-being. I understand that one man's terrorist is another's freedom fighter; however, we must look at this issue from the perspective of America's interest. Have we forgotten the first World Trade Center bombing, the shooting at the Central Intelligence Agency's headquarters, and September 11, 2001? This regulation combined with this administration's lenient detention and removal policies does nothing but invite the incidence of much more fraud in the asylum and refugee processes as well as the threat to our national security.

A *Washington Times* article, dated February 5, 2014, described a secret internal government report that a 2009 government audit found that 70% of asylum applications showed signs of fraud. This is a shocking finding, clearly demonstrating the ineptitude of the system in this regard. The article does not indicate that the report has ever been presented to Congress. If not this is blatant disregard for Congress' oversight authority and responsibility. Also, it is not clear from the brief article what actions the Department of Homeland Security has taken to correct the circumstances under which the apparent fraud went undetected. A reasonable person would take the results of this

audit and augment existing procedures to thwart this abuse of our laws and largesse as well expand the review to include all cases previously granted.

Refugee travel documents are issued to those who are granted sanctuary in the United States and cannot receive a passport from their native country. There has generally not been any restriction on the holder to travel to their native country. Historically, the vast majority of those seeking to obtain this document do so to travel back to their native country - the very country they claimed they were vulnerable to persecution. At the very least this is an indicator of possible fraud and willful misrepresentation in the asylum process.

Lastly, and certainly not least important, fraud perpetrated in the asylum and refugee processes not only facilitates the granting of status of those listed above, it also impacts those legitimately seeking this benefit. Government resources and asylee adjustment numbers are diverted from those most deserving of the status.

The following are examples of the subversion of the asylum and refugee processes which have impacted our national security:

The Department of Justice's Office of the Inspector General's February 2003 review of the Immigration and Naturalization Service found that only 3% of failed asylum seekers with final removal orders were removed from the United States. The report went on to find:

... Although we are not suggesting that all asylum applicants are potential terrorists, we found several asylum applicants who had committed or planned terrorist acts in the United States while they were awaiting their asylum determinations...

Among the terrorists who applied for asylum in the United States were:

Ahmad Ajjaj and Ramzi Yousef

- They entered the United States as asylum seekers in 1991 and 1992, respectively.
- In 1993 they helped commit the first World Trade Center bombing which killed six (6) people.

Ajjaj had left the United States in 1992 and returned with a fraudulent passport. He was convicted of passport fraud and did not complete the asylum process prior to his conviction. Yousef completed his application and was given a date for his asylum hearing. His application was pending when the World Trade Center was bombed.

Sheik Umar Abd ar-Rahman

- He sought asylum in the United States to avoid being deported to Egypt.
- He helped plan a "day of terror" for June 1993. New York City landmarks including the United Nations Building, FBI Headquarters in lower Manhattan, and the Lincoln and Holland Tunnels were to be bombed.

Hesham Mohamed Hadayet

- He applied for asylum in the United States in 1992. Hadayet claimed Egyptian authorities had falsely accused and arrested him for being a member of the Islamic group Gama'a al-Islamiyya.
- INS denied his asylum request and Hadayet was placed in removal proceedings.
- The notice of date of his Immigration Court hearing was sent to an incorrect address. Since Hadayet was not present the Immigration Judge terminated the proceedings.
- On July 4, 2002, Hadayet shot and killed two (2) people at Los Angeles International Airport before he was killed by an El Al Airlines security guard.

Mir Aimal Kansi

- Kansi entered the United States in 1991.
- He applied for political asylum in the United States in 1992.

- The local INS asylum office failed to schedule a hearing for him because Kansi's application was among the pending backlog.
- On January 25, 1993, Kanzi murdered two (2) and wounded two (2) Central Intelligence Agency employees outside its headquarters in McLean, Virginia.

Gazi Ibrahim Abu Mezer

- INS voluntarily returned Mezer to Canada after he was apprehended twice in June 1996 attempting to cross the border into the United States.
- After his third apprehension, in January 1997, INS commenced formal removal proceedings against Mezer because Canada refused to take him back again.
- In April 1997, Mezer applied for asylum in the United States claiming he feared persecution if he was returned to Israel.
- Mezer withdrew his application for asylum in June 1997 and told his attorney that he had returned to Canada.
- Subsequently, Mezer was convicted and sentenced to life in prison for planning to bomb the New York City Subway System.

Recent news accounts continue to demonstrate this threat to our national security:

Waada Alwan and Mohanad Hammadi

- ABC's *Nightline* television program reported that these Iraqi refugees were arrested in Bowling Green, Kentucky in 2011.
- They were part of an al Qaeda group that killed U.S. soldiers with roadside improvised explosive devices.
- The pair were approved for refugee status by the Department of State. This status was granted in spite of the fact that they were in detention for the bombings. The Department of Homeland Security told *Nightline* that record checks did not reflect this detention.
- Alwan and Hammadi plotted to conduct attacks in this country and smuggle weapons and explosives back to al Qaeda in Iraq.
- They pled guilty to providing material support to terrorists.
- The FBI believes there are dozens of such operators in the United States.

On December 12, 2012, the New York Times headline read: *Law Firms are Accused of Aiding Chinese Immigrants' False Asylum Claims*. According to the article six attorneys and twenty-six people were arrested and charged with helping Chinese nationals submit false asylum claims by lying about false abortions and torture based on religious beliefs.

Kefelegn Alemu Worku, aka Hateeb Berhe Temanu

- The Denver Post newspaper reported that this Ethiopian refugee was charged with unlawful procurement of citizenship or naturalization and aggravated identity theft.
- Worku entered the United States in July 2004 as a refugee.
- He was part of Ethiopia's Red Terror group and engaged in the torture, savage beatings, and bloody executions of his fellow citizens.
- Worku was convicted in federal court on October 13, 2012, of unlawful procurement of citizenship, aggravated identity theft, and fraud and misuse of visas.

These are but a few examples of threats to our national security and welfare. I have not included the 9/11 terrorists in this discussion because their subversion of our immigration system has been fully documented by many others and need not be repeated here.

Recommendations:

1. The Immigration and Nationality Act is exceptionally complex. Sections of the law are not neatly defined to encompass each major area of activity: adjudications, inspections, investigations, detention and removal, and border patrol. Immigration officers, regardless of their area of specialization, must be proficient in all aspects of the law. In determining eligibility for a benefit under the Immigration and Nationality Act, an adjudicator must consider the applicant's amenability to the grounds of exclusion and removability from the United States. In the same way, a border patrol agent must determine if the individual encountered attempting to enter the country between the ports of entry is, in fact, a citizen of the United States or is otherwise in compliance with immigration laws and eligible to enter. Similar cross-over and interdisciplinary activity includes inspections, investigations, and detention and removal functions. This complexity demands close interdisciplinary relationships among those charged with its administration and enforcement. The current organizational structure of the mission, Citizenship and Immigration Services, Customs and Border Protection, and Immigration and Customs Enforcement, inhibits, if not prohibits, the effective and efficient administration and enforcement of the immigration mission. The Congressional Research Service of the Library of Congress issued a report on April 6, 2006, entitled *Immigration Enforcement Within the United States*. The report, in considering the interrelated roles of immigration officers, stated in pertinent part:

> Some of the duties under immigration law have aspects of immigration enforcement but also contain adjudicative functions (sometimes referred to as services) and are not universally considered enforcement. Immigration inspectors are the classic example of this "dual" role, as inspectors are responsible for keeping those who seek to harm U.S. interests out while letting bona fide travelers in. An alien who is denied entry into the United States by an inspector has not violated any provision of the INA, unless the alien has committed some type of fraud to gain entry. Indeed, there have been people (both aliens and U.S. citizens) who have been wrongly denied entry by an immigration inspector. It could also be argued that a DHS (DHS) Citizenship and Immigration Services (USCIS) adjudicator is performing an enforcement function by denying an alien's application for a benefit to which he is not entitled…

Therefore, I recommend that the immigration mission be returned to a single agency. This agency must be designated as a national security and law enforcement entity due to the mission's critical and integral role in these matters.

2. Generally, presidential appointees are neither authorities nor specialists in immigration laws and policies. While the appointees may be well intended, their lack of knowledge and experience in this critical federal responsibility prevents them from fully appreciating the implications and consequences of immigration-related actions and decisions. Further, the likelihood of these appointees becoming fully knowledgeable about the laws and policies before they leave their positions in the agency is minimal.

Therefore, I recommend that the agency charged with the immigration mission must have no more than one political appointee in a leadership position.

3. Accountability is a critical leadership component in any organization, particularly one that holds the public's trust. All individuals must realize consequences for failing to act in the nation's best interest. The *Washington Times'* article discussed above is a clear example of a system that has failed us all. Clearly there were decisions made long before the audit that at the very least facilitated the fraud perpetrated in the asylum process. Why did it take until 2009 before USCIS leadership took action to audit the process? Have cases that were not part of this audit been reviewed to identify potential fraud and take action in those cases where it exist to rescind asylum status? Is USCIS now regularly auditing cases to determine the level of fraud in the process? Has any leader(s) in the agency been disciplined or terminated for this egregious breach in our national security?

Therefore, I recommend that the Congress work with the Executive Branch to take all necessary action to ensure to the American public that their security is being protected in the asylum process.

4. Asylum officers require information and intelligence pertinent to the native countries of the asylum applicants. No longer can they solely rely on country condition reports that contain information that may be months, if not years old. As we know events and conditions in the world often change in geometric proportions rapidly,

oftentimes in the span of twenty-four hours. The officers must have information and intelligence at their disposal which is germane and timely to the decision process.

Therefore, I recommend that the Congress work with the Executive Branch to take all necessary action to ensure that asylum officers have systems available whereby they can access information and intelligence related to the asylum process.

5. The Executive Office for Immigration Review (EOIR) is a key component of the asylum process. The EOIR's immigration judges (approximately 220 judges) received 44,170 asylum applications among the 410,753 filings in FY2012. The asylum cases represented more than 10% of that fiscal year's total workload. Each immigration judge averaged 200 asylum applications in his/her caseload that year. The immigration judges require the same access to information and intelligence to render knowledgeable decisions.

Therefore, I recommend that the Congress work with the Executive Branch to determine the proper staffing level for immigration judges to maintain integrity in the asylum process and that the immigration judges have access to the same information and intelligence systems as the asylum officers.

I am available to continue this discussion and/or answer questions related to this or any other immigration matter.

Respectfully,

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